



January 18, 2018

To Whom It May Concern:

Montana Fish, Wildlife & Parks (FWP) invites the public to comment on a proposal to purchase a perpetual conservation easement on approximately 3,980 acres from the Rumney Cattle Company (Birdtail Conservation Easement). The proposed easement is located northwest of Cascade on the north edge of the Birdtail Hills. The easement would conserve important wildlife habitat by preventing subdivision, development and other forms of habitat loss; perpetuate the agricultural lifestyle of the Rumney Cattle Company who would own the land under easement; and guarantee public recreational access to the property. The land would remain in private ownership and on state and county tax rolls.

A Draft Environmental Assessment (EA) and Draft Management Plan are provided for review. Public comment will be accepted January 19 through February 19, 2018. A public meeting on the proposed conservation easement will be held at Wedsworth Hall in Cascade, January 30<sup>th</sup> at 7:00 p.m. Written comments or additional copies of the draft EA can be obtained on the FWP website at <http://fwp.mt.gov/home/publicComments.html> or at the following address:

Montana Fish, Wildlife & Parks  
Attn: Birdtail CE  
PO Box 488  
Fairfield, MT 59436

Electronic comments or questions can also be submitted to: [blonner@mt.gov](mailto:blonner@mt.gov)  
Attn: Birdtail CE

Thank you for your interest and involvement,

Gary Bertellotti  
Region 4 Supervisor  
Montana Fish, Wildlife & Parks  
4600 Giant Springs Road  
Great Falls, MT 59405  
(406) 454-5840

A Proposal by  
**MONTANA FISH, WILDLIFE & PARKS**  
To Purchase the  
**BIRDTAIL CONSERVATION EASEMENT**



**Montana Fish,  
Wildlife & Parks**

Region 4  
4600 Giant Springs Road, Great Falls, MT 59405

## **INTRODUCTION**

Montana Fish, Wildlife and Parks (hereafter, “FWP” or “the Department”) is seeking public comment on its proposal to purchase a Conservation Easement (CE) to protect wildlife habitat and ensure continued public access on the Rumney Cattle Company Birdtail property (hereafter, “the Birdtail”). The CE would conserve approximately 3,980 acres of primarily intermountain foothill grassland habitat in east-central Cascade County, approximately 13 miles northwest of Cascade, MT in deer/elk hunting district (HD) 421 (Figure 5).

This proposal represents the proposed application of funds from FWP’s Habitat Montana Program and Deer and Elk Auction license accounts. Funds for the Habitat Montana program are generated from earmarked portions of big game licenses to be specifically used for the protection of wildlife habitat in Montana. As per terms of Habitat Montana funds, public recreational access is a mandatory component of land projects such as this. As prescribed by legislation, Auction license funds are to be used for the beneficial management of the individual species (deer and elk) and a portion of the funding is allocated to a capital account for habitat protection.

The purpose of this CE would be to conserve important wildlife habitat by preventing subdivision, development, and other forms of habitat loss; perpetuate the agricultural lifestyle of the Rumney Cattle Company who would own the land under easement; and guarantee public recreational access to the property. The land would remain in private ownership and on state and county tax rolls. The primary traditional use of the land is cattle production which would remain under terms of the proposed CE. The CE would endure in perpetuity and would be enforceable upon any potential future owners of the property.

## **PURPOSE AND NEED FOR THE PROPOSED ACTION**

### **Relevant Authorities, Direction and Plans**

Fish, Wildlife and Parks is authorized by State law (§ 87-1-209, MCA) to purchase land in fee title or conservation easement in order to protect fish and wildlife habitat. The Montana Fish and Wildlife Commission is the decision making authority for matters concerning acquisition of conservation easements or other interest in land proposed by FWP. The following laws and rules are applicable for this proposed action:

- The Habitat Montana program authorized by Montana Code Annotated (MCA) § 87-1-241 (accompanying regulations found at Admin. R. Mont.12.9.509) seeks to conserve Montana’s wildlife populations and natural ecological systems. Habitat Montana funded land projects are also intended to: 1) conserve land, water, and wildlife; 2) contribute to hunting and fishing opportunities; 3) contribute to non-hunting recreation; 4) protect open space and scenic areas; 5) promote wildlife habitat-friendly agriculture; and 6) maintain the local tax base through continued payments of property taxes.
- Fish, Wildlife and Parks has the authority to acquire land or interests in easement upon lands (§ 87-1- MCA 209) that are suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection; for public hunting, fishing, or trapping areas; and for state parks and outdoor recreation.
- State statute § 76-6-201 through 204 authorizes the use of conservation easements, describes the duration, and permissible types of easement.

Montana’s State Wildlife Action Plan (SWAP, 2015) further identifies focal areas within the state that contain important terrestrial habitat community types. The Birdtail contains several important habitat types that are considered a priority for long-term habitat conservation. Further details related to these priority habitat types are described in the following section.

### **Project need**

This proposal serves as an opportunity to conserve approximately 3,980 acres of valuable wildlife habitat, working range land, and public recreational access in perpetuity. The Birdtail consists of several habitat types of statewide importance:

- The property lies within the FWP Region 4 Rocky Mountain Front Buffer Tier II Terrestrial Focus Area. As defined in Montana’s SWAP (2015), Tier II designation is defined as habitat in need of moderate conservation need (resources could be used to implement conservation actions that provide direct benefit to these areas).
- The Birdtail contains Tier I Terrestrial Community types, most of which is within the grassland and riparian community type systems. Other areas (shrubland, steppe, and savanna systems) within the proposed property are defined as Tier II Terrestrial Community types.
- At least portions of the Birdtail parcel fall within the lowland/prairie grassland community types of greatest conservation need (CTGCN). Habitat protection standards should be made to “continue to utilize Habitat Montana and other funding sources to support opportunities to conserve high priority CTGCN through fee title acquisitions and conservation easements” (SWAP, 2015).



**FIGURE 1.** The Birdtail property – view looking northeast towards Lionhead (left) and Birdtail (right) Buttes located within the property.



**FIGURE 2.** The Birdtail property – view looking north from the southeast corner of the property. Lionhead (left) and Birdtail (right) Buttes are seen in the distance.



**FIGURE 3.** The Birdtail property – view looking northeast from the southwest corner of the property.



**FIGURE 4.** The Birdtail property – view looking southwest from the bottom (west side) of Birdtail Butte.

These diverse habitat types also typically support an assortment of wildlife species including small and large mammals, birds, reptiles and amphibians. Some of these species are listed as species of greatest conservation or inventory need (SGCN / SGIN). According to suitable habitat and range maps generated by Montana Fish, Wildlife & Parks, there are 9 SGCN and 9 SGIN with the potential to occur or are on this property (Table 1) (SWAP, 2015).

The majority of landownership in the Birdtail Hills area is under private ownership with a relatively high percentage of the larger acreage ownerships utilized for agricultural production needs (livestock range and cultivated crops). Fortunately, large scale habitat manipulation or fragmentation has been minimal on these larger properties. However, it is unknown what changes may occur in the future, especially if ownership of such properties, such as the Birdtail, changes. The south/central portion of the Birdtail Hills provides a good, local example of the real possibility of a fragmented landscape. The replacement of native vegetation with various dwellings, additional fences, driveways, and other modifications would create a direct habitat loss for wildlife. Given the unknown future of public funding sources, failure to act on this current opportunity could make future success in conserving this land more difficult.

Securing long-term public access opportunities is also considered to be an important part of this project. Although many landowners in this area do allow public access, it is evident in a broader context that public access is becoming more difficult due to changing ownership values and/or interests. The owners of the Birdtail currently allow significant public access (hunting, wildlife viewing and other forms of recreation). This proposed CE would secure in perpetuity this access for hunting, trapping, and wildlife viewing opportunities. More specifically, as hunting is removed from acreage in more rural settings, there would be increasing potential for wildlife, particularly elk in this area, to seek refuge in areas closed to hunting. Experience has shown that this can prevent FWP from trying to effectively manage elk

populations in balance with natural forage and from effectively controlling levels of private land property damage caused by elk and other wildlife.

Balancing the Birdtail property values such as working range lands for cattle, diverse wildlife habitat, and public access is important to maintain into the future.

### Proposed Action

Fish, Wildlife and Parks is proposing to purchase a CE from the Rumney Cattle Company on their approximate 3,980-acre property, known as the Birdtail, utilizing funds from the Habitat Montana Program and Deer and Elk Auction license accounts. If this proposal is approved, FWP plans to complete the CE purchase within one year. Management of the land under the CE would be at the sole discretion of the landowner provided that such land management/public access actions would comply and be consistent with the agreed terms of the CE (and associated management plan).

### Location

The Ranch lies approximately 13 miles northwest of Cascade, Montana and 11 miles south of Simms, Montana in Township 19N/Range 3W/Sections 2, 3, 9, 10, 11, 14, 15 and Township 18N/Range 3W/Sections 34 and 35 (Figure 5).

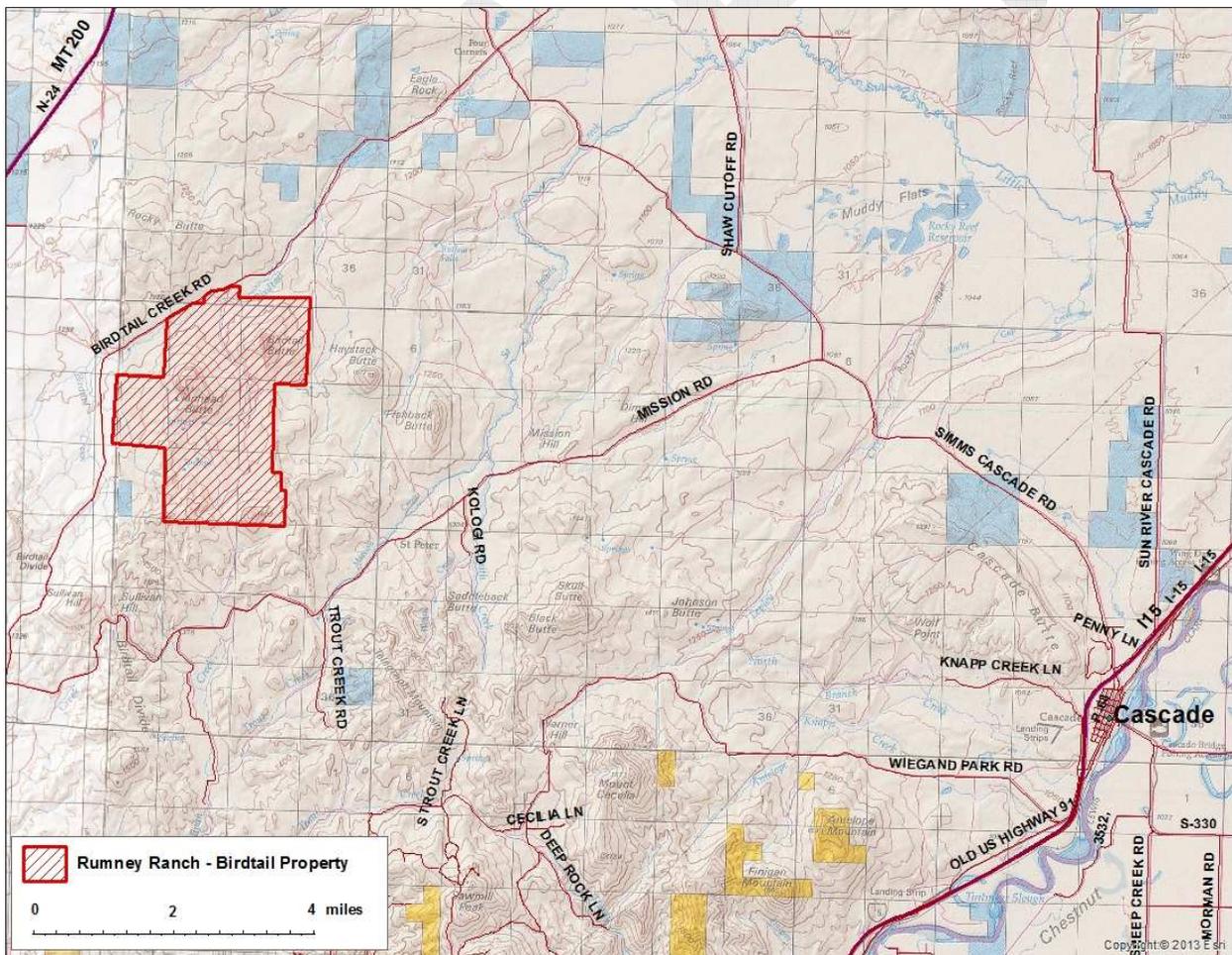


FIGURE 5. General location of the Rumney Cattle Company Birdtail property.

## **Decision to be Made**

The decision to be made is whether FWP should move forward with the proposed purchase of a CE on the 3,980-acre Birdtail property. Following completion of the draft environmental assessment (EA) and public comment period, the FWP Region 4 supervisor will issue a decision notice that makes a recommendation to the Fish and Wildlife Commission on a course of action. This course of action could be either the Proposed Action or the No Action alternatives, or an action that is within the scope of the analyzed alternatives.

As with other FWP conservation projects that involve land interests, the Fish and Wildlife Commission and the State Board of Land Commissioners would make the final decision. This draft EA and the comments FWP receives are part of the decision-making process.

## **ALTERNATIVES**

### **Alternative A: Proposed Action, purchase of a Conservation Easement on the Birdtail property owned by the Rumney Cattle Ranch.**

The Department would purchase a CE on the approximate 3,980-acre Birdtail property using Habitat Montana funds. The fair market value of the CE is \$2,350,000 as determined by a qualified appraisal. For the property to satisfy the needs of the proposed grazing system, establishing additional wildlife friendly fencing and water development infrastructure is necessary. The Department's total cash contribution towards this shall not exceed \$41,500 based on estimated costs to complete such infrastructure. The Department will either provide reimbursement for the cost of materials or will provide 50 percent reimbursement for completed contracted improvements, neither of which will be allocated until work has been deemed satisfactory by Department staff.

Under the terms of the Deed of Conservation Easement, each party would retain or receive the following rights. Most items listed below are abbreviated - see Attachment A for a copy of the Draft CE and Attachment B for copy of the Draft Management Plan further details.

The Rumney Cattle Company and/or any future landowner(s) [hereafter, "Landowner(s)"], would retain the rights to:

1. Raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock; provided that any livestock grazing is consistent with a rest-rotation grazing system as approved in writing by the Department as part of the Management Plan.
2. Lease the land to another agricultural operator for agricultural purposes, provided that: (i) a lease is written by the Landowner and the lessee(s); (ii) the lease requires the lessee to follow the terms of the Easement, as well as any applicable provisions of the Management Plan; and (iii) a copy of the executed lease is provided to the Department.
3. Conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with the Department and consistent with the Management Plan. Any habitat restoration or enhancement project not specifically provided for in the Management Plan would require prior approval.
4. Use, develop, and maintain water resources, including stock water ponds, ditches, irrigation structures and equipment, canals, pumps and pump sites, pipelines and water wells, necessary for grazing, wildlife, habitat restoration and improvement, domestic use, and all agricultural purposes that are allowed by this Easement; provided, however, any new water development or change in

- water use or water distribution that would have a significant adverse impact on a perennial or ephemeral river or stream, stream flow, wetlands, or riparian vegetation is prohibited.
5. Construct, remove, maintain, renovate, repair, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted agricultural land management purposes. Any fence or other barrier that would significantly impact wildlife habitat or wildlife movement or migration on or through the Land is prohibited; however, this prohibition does not apply to corrals, windbreaks and other structures necessary to confine livestock, or protect silage storage, or haystacks.
  6. Construct new and maintain existing roads and bridges or waterway crossings in connection with farming, ranching, or timber management. Any road, bridge, or waterway crossings constructed for one or more of such purposes shall be sited and maintained to minimize adverse impact on the Conservation Values. Any new road construction (but not including maintenance of existing roads) shall be subject to the prior approval of the Department.
  7. Use the land for noncommercial recreational purposes, including hunting and fishing for themselves and to their immediate family.
  8. Maintain, repair, and upgrade utilities existing on the Land, including utility structures, lines, conduits, cables, wires, or pipelines. Certain new utility installation activity is subject to prior approval by or notification to the Department.
  9. Construct wind, solar, hydropower and other types of renewable energy generation facilities (“renewable energy production”) solely for uses on the Land, except that any incidental surplus energy may be sold commercially for use off the Land or credited to Landowner’s utility service. Such activity is subject to prior approval by the Department and must be consistent with protection and preservation of the conservation values.
  10. Use agricultural chemicals for control of noxious weeds, as defined by the State of Montana or other lawful authority with jurisdiction, and other invasive nonnative plants.
  11. Regulate public use of the land at all times; subject, however, to the right of public recreational access granted to the Department as further defined in the Easement.
  12. Explore for and extract oil and gas. Please refer to the draft CE for further information on restrictions related to this activity.
  13. Sell, grant, donate, bequeath or otherwise convey the Land in its entirety to another party. The Landowner and the Department mutually agree that the parcel shall be maintained in unified title as a single unit.
  14. Extract gravel, rock, and earthen fill from one location on the Land, the gravel pit site.

The proposed conservation easement, except as specified in easement terms, would also generally prohibit the removal or destruction of riparian or native vegetation; manipulation of riparian and wetlands areas; transfer of existing water rights; unlawful use of herbicides, biological control agents, and pesticides; construction of roads; cultivation or farming of any portion of the Land; renting or leasing of the parcels for commercial recreation (e.g., outfitting businesses); construction or placement of any structure or building; residential use of the Land; development of shooting preserves, wildlife propagation and related activities; granting of utility easements that are inconsistent with the terms of the CE; establishment of commercial feedlot; and processing and disposal of waste and hazardous materials.

The Department would acquire the rights to:

1. Identify, preserve, protect, and enhance, in perpetuity, the Conservation Values of the Land;
2. Enter the parcel to monitor compliance of the CE terms and rights to observe, study, and make and/or record scientific observations of the Land’s wildlife, habitat, and ecosystems;
3. Monitor any activity on the Land or use of the Land which is inconsistent with the purposes and terms of this Easement;

4. Place and replace small markers to identify boundaries and other reference points on the parcel; and
5. On behalf of the public, the right of access from public roads and right-of-way for the purpose of hunting, trapping, and wildlife viewing activities in accordance with the terms of the CE.

As a component of the CE, a rest-rotation grazing system would be developed to encompass the properties approximate 3,980 deeded acres, divided into three pastures (see Attachment B, Appendix C). Highlights of the grazing system include:

- Development of a three-pasture rest rotation grazing system. Within each pasture, smaller sub-pastures would be established by current permanent fences, additional proposed fence infrastructure and natural barriers. These sub-pastures would help with distributing and balancing grazing across the larger permanent pasture areas.
- A portion of the property be available for an early treatment, or growing season grazing, which would occur between the dates of May 1 – July 31. A portion be available for a late treatment, or post-seed ripe grazing, which would occur between the dates of August 1 until October 15. The remaining portion of the property would receive the rest treatment, where no livestock grazing occurs during that calendar year. These pastures would rotate each year so that each pasture set receives two years of growing-season rest and one year of growing season use every three years.
- A Department monitored grazing plan to assess effectiveness, functionality, and Landowner compliance. Livestock use and distribution would also be assessed annually.

No farming activity (production of cultivated crops) would be permitted on the Land.

**Alternative B: No Action and no purchase of a Conservation Easement on the Birdtail property owned by the Rumney Cattle Company.**

The Department considered the alternative of taking no action. Current and future management options would be left open for the current and/or potential future landowners to manage as desired. The potential for the property to remain in its current, unbroken native rangeland state, or the possibility for public access to or across the property, would be at the discretion of current and/or future landowners. In addition, FWP (Habitat Montana) would revert current funds set aside for this project.

## **AFFECTED ENVIRONMENT**

### **Land Use**

The Birdtail is a portion of a working cattle ranch operated by the Rumney Cattle Company (managed primarily as a cow-calf pair and yearling livestock operation – Black Angus Cattle). The property currently is annually utilized by approximately 300 cow/calf pairs. Depending on the year, 80-100 yearlings may also be present on the property. There are no grazing leases or state/federal lands associated with this property. This proposed grazing plan associated with this CE is designed to meet the ranch needs and meet FWP grazing standards. No cultivated farm ground or residential buildings occur on the property.

### **Habitat**

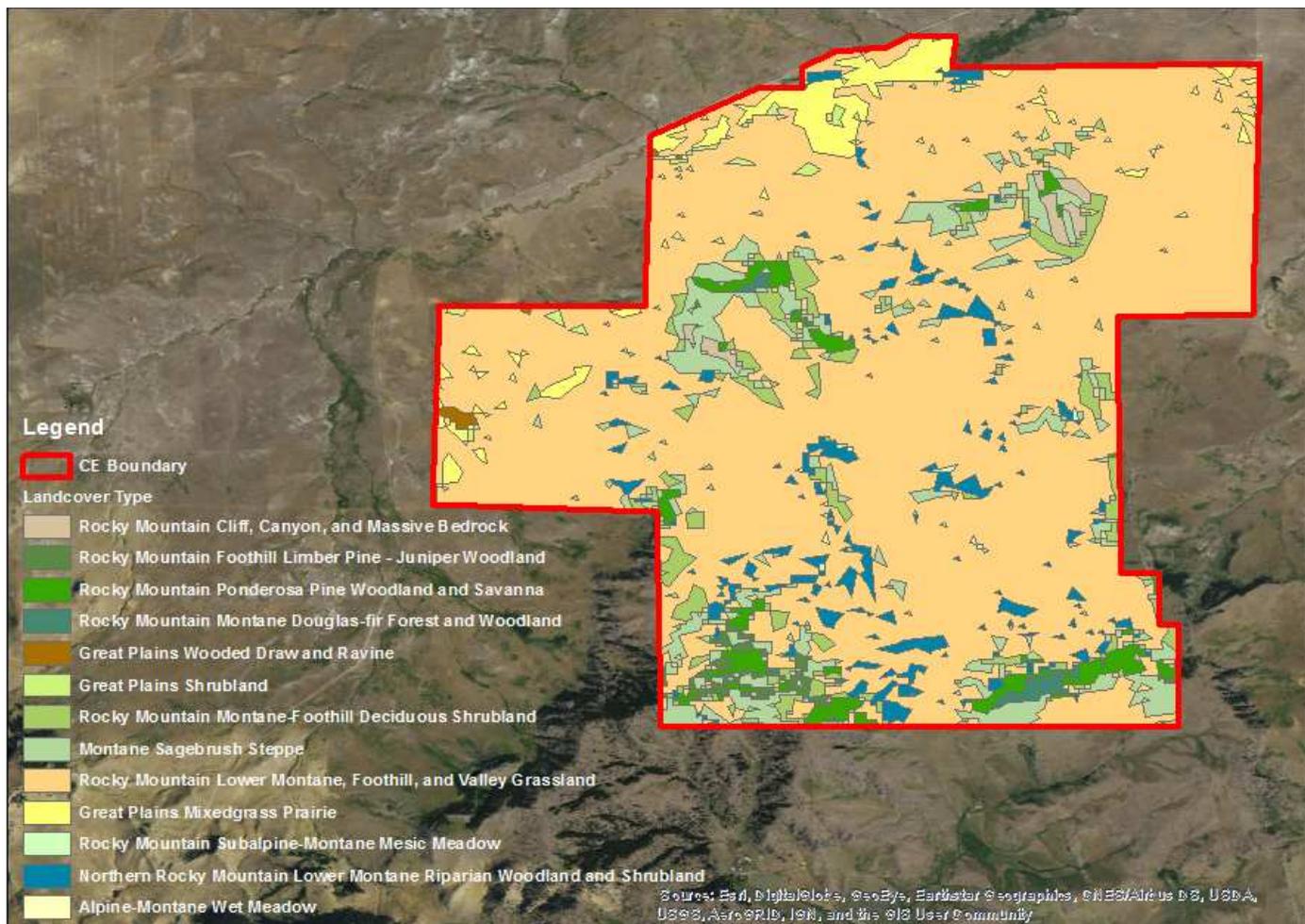
The Birdtail is broadly characterized as an intermountain foothill grassland ecotype with intermixed riparian communities and scattered shrub steppe habitat types. Approximately 84% (3343 acres) of the

Birdtail is composed of native grasslands (Figure 6). The grassland habitat type is composed of grass species such as rough fescue, Idaho fescue, blue bunch wheatgrass, green needle grass, western wheatgrass, prairie junegrass, basin wildrye, orchard grass, Kentucky bluegrass, smooth and mountain brome and sandberg bluegrass. Some forbs commonly associated with the landscape include flax, aster spp., goldenrod, lupine, arrow leaf balsamroot, sticky geranium, phlox, blanket flower, and common yarrow, to name a few.

Approximately nine percent (370 acres) of the property consists of shrubland/forest habitat. Woody shrub and tree species are critically important to wildlife. Dominant woody species found on the property include rose, skunk bush sumac, chokecherry, buffalo berry, currant, snowberry, aspen, willow, birch, alder, dogwood and Douglas fir.

Floodplain/riparian habitat and cliff/canyon/talus slope habitat types constitutes approximately three to four percent (approximately 300 acres total) of the property. Approximately 1.5 miles of Birdtail creek flows through the northern portion of the property. Birdtail and Lionhead Buttes make up most of the cliff/talus slope habitat located on the property.

**FIGURE 6.** Specific habitat landcover type delineations on the Birdtail CE.



## Wildlife Species

Due to the mixture of habitat types located on the Birdtail wildlife diversity on the property is considered relatively strong. From a game perspective, the property provides known important seasonal and/or year-round habitat for elk, pronghorn, mule/white-tailed deer, bighorn sheep, sharp-tailed grouse, and Hungarian partridge. The property also serves as good habitat for a variety of other small mammals, seasonal waterfowl habitat (limited), migratory raptors, passerine birds and other nongame species.

Existing and ongoing wildlife population data for species is primarily limited to elk and antelope for this immediate area. Elk are present on the property throughout the year to varying degrees. Anywhere from zero to 300+ elk utilize the property and/or immediate neighboring lands at any given time. The property rests within the Birdtail Hills Elk Management Unit (EMU) which consists of Hunting District's (HD) 421 & 423. The latest minimum aerial survey observations for this EMU (winter 2016/17) were just under 800 total elk. The property is also located within the HD 440 antelope hunting district. The latest complete aerial survey of this HD (2015) gave way to minimum observations of just over 400 antelope.

The property and surrounding area also provides habitat or potential habitat for several Montana SGCN or SGIN. According to suitable habitat and range maps generated by Montana Fish, Wildlife & Parks, there are 9 SGCN and 9 SGIN with the potential to occur on this property (Table 1) (SWAP, 2015). Wildlife presence and abundance on the property varies depending on the time of year. This Management Plan will focus efforts on perpetually maintaining and/or enhancing habitats for all game and nongame species.

**TABLE 1.** List of species of greatest conservation and inventory need potentially located on the Birdtail property as identified within range maps in the MT State Wildlife Action Plan (2015).

Species of Greatest Conservation Need	Species of Greatest Inventory Need
<b>Mussels</b>	
- Western Pearlshell ( <i>Margaritifera falcata</i> )	
<b>Amphibians</b>	
- Northern Leopard Frog ( <i>Rana pipiens</i> )	
- Great Plains Toad ( <i>Anaxyrus cognatus</i> )	
<b>Birds</b>	
- Chestnut-collared Longspur ( <i>Calcarius ornatus</i> )	- Black-billed Cuckoo ( <i>Coccyzus erythrophthalmus</i> )
- Mountain Plover ( <i>Charadrius montanus</i> )	- Common Poorwill ( <i>Phalaenoptilus nuttallii</i> )
- Lewis's Woodpecker ( <i>Melanerpes lewis</i> )	- Great Gray Owl ( <i>Strix nebulosa</i> )
	- Short-eared Owl ( <i>Asio flammeus</i> )
	- Barrow's Goldeneye ( <i>Bucephala islandica</i> )
<b>Mammals</b>	
- Dwarf Shrew ( <i>Sorex nanus</i> )	- Spotted Bat ( <i>Euderma maculatum</i> )
	- Yuma Myotis ( <i>Myotis yumanensis</i> )
	- Porcupine ( <i>Erethizon dorsatum</i> )
<b>Reptiles</b>	
- Milksnake ( <i>Lampropeltis triangulum</i> )	- Greater Short-horned Lizard ( <i>Phrynosoma hernandesi</i> )
- Western Hog-nosed Snake ( <i>Heterodon nasicus</i> )	

## Fisheries Species and Water Resources

Approximately 1.5 miles of Birdtail creek flows through the northern portion of the property. Although there is typically consistent water present in this creek (varying degree depending on the time of year), it

is not known to sustain fisheries. There are considerable other water sources (natural springs) present on the property, but it is unknown how much of these provide habitat for water dependent species such as amphibians, waterfowl or other waterbirds. No known fisheries are associated with these other water sources. Several of these other water sources do provide a good distribution of water for the routine livestock grazing activities. Some limited water development work is proposed to occur in conjunction with this CE and associated management plan with respect to the grazing plan.

### **Recreational Opportunities**

The Landowner traditionally allows good public hunting and recreational access. The Birdtail parcel is currently enrolled in FWP's Block Management Program, having unlimited park and walk hunting access for all legal species during the general fall upland game and big game seasons (commonly defined as September 1 to January 1 of the following year). Access is obtained via the Birdtail County Road. Purchase of this easement would ensure future public recreation opportunities. For further details and information on proposed recreational opportunities, see the CE and Management Plan (Appendices A & B).

## **PREDICTED ENVIRONMENTAL CONSEQUENCES**

### **Land Use**

#### Proposed Action:

If the proposed CE were approved, the traditional uses of the land would be maintained under the terms of the CE. There would be no negative impact to the productivity or profitability of the Landowner. The terms of the CE do require some of the current land management practices to be modified, such as the implementation of a rest-rotation grazing system, and prohibit others, such as disturbances to riparian areas or the breaking up of native ground. To implement and accommodate the grazing plan, the Landowner and FWP would develop a cost-share agreement for new water pipeline, fence, solar pump and stock tanks.

The proposed CE would serve to maintain future management options for protecting, conserving, and propagating wildlife by perpetually preserving the natural habitats, providing for the continuation of traditional ranching operations, and maintenance or expansion of public recreation on the property.

#### No Action:

If the proposed CE were not approved, the property would likely continue to be managed and maintained in its current form. This no action alternative would result in no guarantee for future land use practices that may negatively impact wildlife habitat quality. No assurance of future public access would be approved.

### **Vegetation**

#### Proposed Action:

This proposed action would result in a positive long term impact to vegetation resources on the Land. The terms of the CE maintain and protect the quantity, quality, and character of the native habitat communities found on the property. The diversity and intermixing of grassland, forb, shrub and tree species found on the property are important to wildlife for cover and forage values. The removal, control, or manipulation of native vegetation species important to wildlife by any means would be prohibited within the terms of the CE unless such activity is mutually agreed upon by the Landowner and FWP. These prohibitions do not apply to the routine activities as defined in the CE. The Landowner would be permitted to harvest

timber for firewood, fencing, and corrals to be used on the Land. No other timber management activity would be allowed to occur unless authorized and approved as defined in the CE terms and conditions.

The rest-rotation grazing system, as described in Appendix A of the Management Plan, would maintain and enhance the vigor and productivity of vegetation on the property over time.

The proposed action also ensures the Land's primary use in the future would be livestock grazing, which depends on maintaining productive vegetation. The Department would be responsible for establishing a baseline inventory report that would document wildlife habitat, plant communities, roads, fences, and water developments that will serve as a baseline for future monitoring. Additional vegetation photo points and other monitoring plots will be established and maintained by FWP in appropriate areas to examine vegetation condition and long- and short-term changes as a measure of management effectiveness.

No Action:

Without protection of the quantity, quality, and character of the native plant communities found on the property, there would likely be no change in the short-term if the property is maintained under the current operating framework. However, if the Land is sold to an alternative owner, there would be no conservation measures put in place to maintain the productivity of the Land. Future impacts to native vegetation and overall productivity of the land would be unknown.

**Fish and Wildlife Resources**

Proposed Action:

The proposed Birdtail CE would benefit a variety of wildlife. The terms of the CE conserve and protect the Land as agricultural and open space to provide year-round and seasonal habitat for a considerable number of native wildlife species. As such, conserving native plant communities associated with these species is important. Protection from subdivision and conversion to tillage agriculture, and implementation of a rest-rotation grazing system would ensure adequate quantity and quality of forage and cover for a variety of wildlife species. No adverse effects are expected on the diversity or abundance of game species, non-game species or unique, rare, threatened, or endangered species.

Wild game populations fluctuate over time and may periodically exceed FWP management objectives, thus contributing to above-average wildlife use of the property, potentially resulting in game damage problems. Such circumstances on the Birdtail would be managed through public hunting during a general hunting season framework. Game damage assistance and any special prescribed hunts would be provided on an "as needed" basis.

The proposed action would ensure public hunting access in perpetuity. Hunting and other wildlife viewing recreation would not negatively impact the overall distribution and population of game species in the area. The seasonal take of game species would continue to be evaluated on an annual basis by FWP biologists, with recommendations being submitted to the FW Commission for the annual hunting season setting process. In accordance with terms of the CE, the public would be allowed to hunt game animals and game birds of all sex and age classes in accordance with hunting regulations adopted by the State of Montana.

No Action:

Without terms to conserve the Land as agricultural and open space to provide year-round habitat for many of Montana's native wildlife species, there would likely be no change in the short-term if the property is kept under its current ownership. However, if there were a change in ownership, there would be no provisions preventing development for recreational purposes or changes in land use that could be

detrimental to wildlife species in the future. No Action would also leave uncertainly for future public hunting access opportunities on the property.

## **Water Resources**

### Proposed Action:

Current agricultural uses on the property have proven to be mostly compatible with maintenance of water quality. Some impact has occurred relative to certain water source areas due to cattle concentration. However, if the proposed CE is implemented, some additional water development would occur to in order to implement the proposed grazing system, better improving livestock distribution. This modification is designed to maintain and/or improve both range and riparian conditions.

### No Action:

Future water resource condition would be unknown. However, it is likely little negative impact would occur in the short-term if the No Action Alternative is chosen. Current limited impacts on some riparian areas within the property could remain. If the Land was developed, sodbusted, or sold without CE protection, there would be no assurances that over time the use of the land would not affect water resources and their associated areas (e.g., riparian and wetland).

## **Aesthetics and Recreation**

### Proposed Action:

The terms of the CE would protect open space and scenic values in perpetuity by protecting and improving vigor of native vegetation by maintaining current land use and prohibiting residential and other structural developments.

The Easement would provide year-round public recreational opportunities on the property in perpetuity. (hunting, trapping, and wildlife viewing). The level of public recreation on the property may increase with the approval of the proposed CE and the public's awareness of the permitted uses, although it is expected no significant impact would occur to existing wildlife resources and/or the existing cattle operation. It is also anticipated that any real or perceived increase in public interest would level off over time as folks become further aware of the opportunities afforded.

Hunting and trapping would be allowed on the Birdtail CE if they're consistent with terms outlined in the CE. The terms of the CE would prohibit the operation of a commercial hunting business or charging fees (sometimes known as trespass fees) for hunting, trapping, or other recreational activities on the Ranch.

Owing to activities associated with a cattle operation, the Landowner reserves the right to locate, sign, and regulate public hunting and recreational access from proposed parking areas (see Appendix A, Exhibit B).

### No Action:

In the short term and if the property remains under current management, recreational opportunities would likely remain available and the scenic values would remain unchanged. However, public access would not be guaranteed in perpetuity as it is defined in the proposed CE. If rural subdivision and/or other developments or sodbusting occurred, the scenic and recreational values of the area would be reduced.

## **Public Services, Taxes, and Community**

### Proposed Action:

Under the Proposed Action Alternative, there would be no effect on local or state tax bases or revenues, no alterations of existing utility systems or tax bases or revenues, nor increased use of energy sources. As an agricultural property, the Land would continue to be taxed as it has before.

However, the terms of the CE would restrict future residential and commercial developments on the properties lands.

### No Action:

Identical to the implementation of the Proposed Action, the No Action Alternative would not impact local taxes and public services if the Land continued to be maintained as a working ranch. However, any potential future ownership changes could allow greater potential for changes in land use classifications (e.g., agricultural to recreational) that could increase local property taxes for the county. Also, a change in ownership and land use may lead to subdivision and or additional residential development, which may be accompanied by higher demand for utilities, roads, and other services that would have to be partially or wholly provided by state and local governments.

## **Cumulative Effects**

A conservation easement on the Birdtail property would contribute to the preservation of important native habitat for the benefit of numerous resident, transient and migratory wildlife species. The property would also allow guaranteed public access opportunities in perpetuity.

Based on the proposed terms of the CE and to the benefit of the Rumney Cattle Company, the property would also remain in agricultural production. The implementation of a rest-rotation grazing system for the deeded land is expected to be of benefit to the native vegetation in maintaining and/or restoring range health. In addition to improving the vigor of native vegetation, over the long term the grazing program would improve the amount of forage and/or cover available to wildlife, thus potentially assisting in the maintenance or improvement of their presence and distribution.

## **RESOURCES CONSIDERED BUT ELIMINATIVE FROM DETAILED ANALYSIS**

The Montana Environmental Policy Act, MCA § 75-1-101 *et seq.* (MEPA), provides for the identification and elimination from detailed study of issues which are not significant or which have been covered by a prior environmental review, narrowing the discussion of these issues to a brief presentation of why they would not have a significant effect on the physical or human environment or providing a reference to their coverage elsewhere (ARM 12.2.434(d)). While these resources are important, they were either unaffected or mildly affected by the Proposed Action and the effects could be adequately mitigated.

## **Land Resources**

### Proposed Action:

The proposed CE would ensure that the Land's resources are maintained. Some soil-disturbing activities would occur under normal ranching operations, but are not considered to be detrimental to the overall habitat value of the property. The terms of the proposed CE would prohibit large scale, adverse changes to the existing physical attributes of the ranch.

With prior approval of FWP, the landowner would reserve the right to explore renewable energy (wind,

solar, hydropower and other) and explore/extract oil and gas resources only if such activity will not result in significant impairment or interference with the conservation values of the CE. The probability of significant mineral resources being located within the Ranch and the likelihood for subterranean resource development is low. Overall, FWP predicts the potential for long-term change to existing land resources is expected to be minimal.

#### No Action:

If the Ranch remained under current management, impacts to the Land's resources are expected to be identical to those described for the Proposed Action. However, if the land were sold to an alternative operator, disturbance of soils from more intensive agricultural practices, residential development, mineral, or other commercial uses could occur.

#### **Air Quality**

The Department anticipates there would be no changes to the ambient air quality for either the Proposed Action or No Action Alternatives.

#### **Noise and Utilities**

The Department anticipates there would be no changes to the current noise levels or utilities for either the Proposed Action or No Action Alternatives. Under the terms of the proposed CE, the landowner would retain the right to maintain, repair, or replace utilities existing on the property. Additionally, the proposed CE would allow for new utilities or utilities leases/right of ways if they are consistent with the terms of the CE and have no negative impacts on the conservation values.

#### **Risk and Health Hazards**

The Department anticipates there would be no changes to risks and health hazards for either the Proposed Action or No Action Alternatives.

#### **Cultural and Historic Resources**

The Proposed Action and No Action Alternatives under current management regime would not cause a change in land use, so FWP anticipates there would be no impacts to cultural sites. If the Ranch was sold to an alternative operator, changes in land uses may increase impacts to cultural resources occurring on the property.

### **NEED FOR AN ENVIRONMENTAL IMPACT STATEMENT**

Based on an evaluation to the impacts to the physical and human environment, under the Montana Environmental Policy Act (MEPA), the proposed action is not a significant action affecting the human environment; therefore, an environmental impact statement is not a necessary level of review.

### **PUBLIC PARTICIPATION**

#### **Public Involvement**

Prior to the preparation of this draft EA, a formal public participation specific to the proposed purchase of this CE began with a 40-day scoping process. Part of this scoping process included the proposal to include a separate parcel (Whitmore) as a proposed CE. However, after further discussion between FWP

and the Landowner, it was decided to move forward with the Birdtail CE and then look at the other parcel as a separate project in the future. This scoping process represented the first step in the environmental review process, wherein FWP invited the public to identify any issues and concerns related to this CE proposal. Copies of the scoping notice were mailed to neighboring landowners, interested parties, put on the Public Notice page of the FWP website and presented to the Cascade County Commissioners.

Montana Fish, Wildlife, and Parks received 13 formal comments during the scoping process, as well as fielded questions that did not result in any formal comments. The verbatim comments are below.

1. *this is a great idea, conservation easements are a win-win for all. Thanks for your hard work.*
2. *I am in favor of these conservation easements.*
3. *On balance, anything that removes large parcels of desirable land from the possibility of xfer to private individuals, and subsequent loss to the public, must be considered a desirable thing.*
4. *it sounds like it would be a great deal for the public I would fully endorse it .*
5. *If it allows the access to hunters I'm for it.*
6. *As a bird hunter and big game hunter I heartily endorse the Rumney easement. Hats off to the Rumney family for approaching FWP about the easement. Loss of hunting opportunities is the main reason hunters leave our ranks. This will help to provide opportunities for us hunters.*
7. *I think this is a great idea! as a member of SCI and an avid outdoorsman I am glad to see FWP considering this as a smart move! Keep up the good work.*
8. *I am not familiar with that area. However, if it is habitat for wildlife and subdividing can be prevented, it am for the idea. I would hope public access for legal hunting would be provided by the land owners.*
9. *this looks like a good opportunity to me.*
10. *I would totally support this project and recommend it be given top priority. To be able to ensure long term public access and priority for wildlife management and prevent additional property from being sold - generally then limiting access and use by other than the "rich" is a very very worthwhile project and use of funds that will benefits generations to come. Please approve and proceed.*
11. *I feel these parcels would be a great addition to enhancing our public access for hunting, fishing, hiking and just plain enjoying the outdoors. Everyone & the wildlife benefits from these two easements. I would fully support these easements and hope that it go's through. Thanks for all your hard work.*
12. *The RMEF would like to go on record supporting this conservation easement for its wildlife conservation values and public access values. RMEF looks forward to partnering on this exciting project with the landowners and MTFWP.*
13. *We have no concern on the "Birdtail parcel" since we do not border that parcel with any of our private lands,...*

Although no formal written comment was received, the Cascade County Commissioners were also verbally supportive of the proposed Birdtail CE.

Pursuant to these comments, FWP will continue the environmental review process to purchase a CE on the Rumney Cattle Company Birdtail Property. The proposed CE would have no effect on the county road right-of-way, in the same manner as other property ownerships intersected by county roads affect rights-of-way.

Public notification of the EA release and opportunities to comment will be by:

- Public notices in the *Great Falls Tribune and Cascade Courier newspapers.*
- Direct mailing to adjacent landowners and interested parties;
- Public notice on the FWP web page: <http://fwp.mt.gov/home/publicComments.html>

- An email to elected officials, pertinent governmental agencies, and interested publics;
- A public meeting hosted at the Wedsworth Hall in Cascade (13 Front Street South) on Tuesday, January 30, 2018 at 7:00PM. Public announcements will be published in area newspapers identifying the time of the upcoming meeting.

Copies of this EA will be available for public review at FWP Region 4 headquarters in Great Falls, the FWP Freezout Lake Office and on the FWP web site (<http://fwp.mt.gov/home/publicComments.html>).

**Comment Period**

The public comment period will extend for thirty (30) days beginning January 19, 2018. Written comments will be accepted until 5:00 p.m., February 19, 2018 and can be mailed or emailed to:

Montana Fish, Wildlife and Parks                   OR           email comments to: [blonner@mt.gov](mailto:blonner@mt.gov)  
 Birdtail CE c/o Brent Lonner  
 PO Box 488  
 Fairfield, MT 59436

**Approximate Timeline of Events (contingent on MEPA analysis and subsequent approvals)**

Public Comment Period	January 19 – February 19, 2018
Decision Notice Published	Late February/Early March, 2018
Project Submitted to Fish & Wildlife Commission	April 19, 2018 Commission meeting
Project Submitted to Montana Land Board	May 21, 2018

**Offices & Programs Contributing to the Document**

Montana Fish, Wildlife, and Parks  
 Nick Clarke, Lands Agent, Helena, MT  
 Kelvin Johnson, Habitat Biologist, Glasgow, MT  
 Graham Taylor, Region 4 Wildlife Manager, Great Falls, MT  
 Rick Northrup, Habitat Bureau Chief, Helena, MT  
 Kristina Smucker, Wildlife Biologist, Great Falls, MT  
 Zack Zipfel, Legal Counsel, Helena, MT

**Person Responsible for Preparing the EA**

Brent Lonner, Wildlife Biologist, Fairfield  
 Montana Fish, Wildlife & Parks, Region 4

**References**

Montana Department of Fish, Wildlife, and Parks (MFWP). 2015. State Wildlife Action Plan. Retrieved from: <http://fwp.mt.gov/fishAndWildlife/conservationInAction/swap2015Plan.html>

**Attachments:**

- A. Draft Birdtail CE
- B. Draft Birdtail CE Management Plan
  - Appendices:
    - A. Recreational Access Rules
    - B. Recreational Access Map
    - C. Grazing System
    - D. FWP Minimum Standards for Grazing Livestock

# Birdtail

## DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (“Easement”) is granted this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Rumney Cattle Company, Inc., aka Rumney Cattle Co. (“Landowner”), whose mailing address is P.O. Box 87 Whitmore Road, Cascade, Montana 59421, to the Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (“Department”).

The following Exhibits are attached hereto and incorporated into this Deed of Conservation Easement by this reference.

**Exhibit A** - Legal Description of the Land

**Exhibit B** - Maps Identifying the Conservation Easement Boundary

**Exhibit C** - Standards for Grazing Livestock

**Exhibit D** - Map Identifying Parking Areas, Public Access Road, and Gravel Pit

### I. RECITALS

- A. The people of the State of Montana recognize that certain native plant communities and important fish and wildlife habitat are worthy of perpetual conservation, and have authorized the Department to acquire perpetual conservation easements, as described in § 76-6-101 *et seq.*, Montana Code Annotated (“MCA”), from willing landowners by voluntary, cooperative means to conserve native plant communities, habitat and other natural resources of value.
- B. The Landowner is the owner of certain real property in Cascade County, Montana (the “Land”), legally described in Exhibit A, attached hereto and incorporated herein by this reference. The Land is depicted in Exhibit B.
- C. The Land possesses significant agricultural values and communities of native plants and wildlife habitat, natural and scenic open-space lands, and public recreational opportunities,

all of which are collectively termed “Conservation Values” and are valuable to the people of Montana and worthy of perpetual conservation.

- D.** The Conservation Values of the Land can be protected in perpetuity by the Landowner and the Department through the grant of a conservation easement to the Department with the Landowner retaining fee title to the Land and overall management of the Land consistent with the terms and conditions of this Easement.
- E.** Landowner and Department agree that the Conservation Values of the Land should be preserved and maintained by the continuation of land use patterns that do not significantly impair or interfere with the protection and preservation of these Conservation Values, in perpetuity.
- F.** The Land provides important opportunities for public recreational hunting, trapping, and wildlife watching and the Landowner and the Department specifically intend that this Easement afford public hunting for recreational purposes and for wildlife management purposes.
- G.** The Department recognizes that the land contains important wildlife habitat, including riparian areas, that is worthy of perpetual conservation and has contributed the funds necessary to acquire this Easement through its Habitat Montana Program and with deer and elk license auction dollars.
- H.** The Landowner intends by executing this Easement, freely, without restriction, and voluntarily, to grant to the Department this Easement, and its associated rights, to preserve and protect the Conservation Values in perpetuity.

## **II. AGREEMENT**

In consideration of the sums paid by the Department, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, §§ 76-6-101, *et seq.*, MCA; the Department’s wildlife habitat acquisition authority, §§ 87-1-209, *et seq.*, MCA; and Title 70, Chapter 17, MCA, the Landowner voluntarily grants and conveys to the Department, and the Department accepts, a conservation easement in perpetuity, with warranties of title, consisting of the following rights and restrictions over and across the Land described in Exhibit A and shown in Exhibit B.

### **A. PURPOSES**

- 1.** The purpose of this Easement is to preserve, protect, and restore upon mutual agreement with the Landowner, in perpetuity the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety of plant and wildlife species, and to prevent any use that will interfere with the Conservation Values of the Land. The Landowner and the Department intend this Easement to limit the uses of the Land to those activities that are consistent with the purposes of the Easement.

2. An additional specific purpose of this Easement is to provide to the Department pursuant to its authority to acquire interests in land at § 87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for the recreational uses, in accordance with the terms and conditions set forth in Section II.B.5 below.
3. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished. The Department and Landowner recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of the Landowners may result in an evolution of agricultural, silvicultural, and other uses of the Land, and such uses are permitted provided they are and remain consistent with the Purposes of this Easement.
4. Pursuant to the terms of § 76-6-107, MCA, the Land preserved by this Easement as natural land, may not, except as specifically provided herein and pursuant to statute, be converted or diverted to any uses other than those provided for by this Easement.

## **B. RIGHTS CONVEYED TO THE DEPARTMENT**

The rights conveyed to the Department in perpetuity by this Easement are the following:

1. **Identification and Protection.** To identify, preserve, protect, and enhance by mutual agreement, in perpetuity, the Conservation Values; subject, however, to the rights reserved by the Landowner in this Easement in Section C below, and further subject to all third-party rights of record in and to the Land that are not subordinated to the terms and conditions of this Easement.
2. **Access.** Upon reasonable prior notice to the Landowner, to enter upon and to inspect the Land; to observe, study, and make scientific observations of the Land's wildlife, wildlife habitat and ecosystems; and to establish and maintain vegetation monitoring transects and enclosures, all to assure that the Department's rights in the Land are maintained and all in a manner that will not unreasonably interfere with the use of the Land by the Landowner. The Department shall also have the right to enter the Land to enforce the rights granted to the Department in this Easement, and the Landowner expressly conveys to the Department a right of immediate entry onto the Land if, in the Department's sole judgment, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted in this paragraph and in Paragraph II. B. 5., this Easement does not grant the Department, nor the public, any rights to enter upon the Land.
3. **Injunction and Restoration.** To enjoin any activity on the Land or use of the Land which is inconsistent with the purposes and terms of this Easement, or which may have a significant adverse impact on the Conservation Values, and to enforce the reasonable restoration of any Conservation Values that may be damaged by such activities.

4. **Markers.** To place and replace, during inspections authorized above, small markers to identify boundaries, corners, and other reference points on the Land. Landowner shall not remove such markers without **Prior Notice** to the Department and without the Department's consent, which will not be unreasonably denied, as provided in Section II. G below.
5. **Public Recreational Access.** The right, on behalf of the general public, of access for the purpose of recreational hunting, trapping, and wildlife viewing on the Land and across the Land to adjacent public land in accordance with the following terms and conditions:
  - a. The public may hunt game animals and game birds of all sex and age classes in accordance with hunting regulations adopted by the State of Montana.
  - b. When demand exists and upon request by members of the public during the general hunting seasons set by the State of Montana, Landowner must permit a minimum of 400 hunters on the Land per year ("hunter days") on a first-come, first-served basis. For purposes of this Easement, the parties agree the general hunting season is the fall hunting season for big game and bird which commonly exists from September 1 to January 1 of the following year. The parties further agree that the general season may be extended or seasons may be added by mutual agreement through the Management Plan.
    1. A "hunter day" is defined as one hunter hunting on the Land for one day, or any part of one day, measured from Midnight to Midnight.
    2. The Landowner, Landowner's immediate family, Landowner's shareholders, partners, employees, and immediate family of shareholders, partners, and employees of the Landowner are not defined as members of the general public by this Easement for the purpose of calculating "hunter days." The term "immediate family" is defined to include spouses, children, in-laws, and parents.
    3. Public access for hunting must be managed on a non-preferential and nondiscriminatory basis.
    4. The Landowner has the right to manage the distribution of hunters on the Land to address reasonable concerns for the safety of persons and property, including livestock.
  - c. The hunting seasons during which the public is allowed access to the Land for hunting under this paragraph must be set and may be changed from time to time by the State of Montana in accordance with applicable laws, regulations, and policies.
  - d. The grant of hunting rights by the Landowner to the Department contained in this Paragraph II.B.5. shall be deemed exclusive to the Department for the benefit of the public and are specifically conveyed pursuant to: (i) § 70-17-102(1), MCA, and thereby this grant creates a servitude running with the Land, and (ii) the Montana Open Space Land and Voluntary Conservation Easement Act, § 76-6-101 *et seq.*, MCA, and thereby

creates a conservation easement for the purpose of protecting significant open-space land protected and preserved for recreational purposes under § 76-6-104(3)(a), MCA.

e. Those members of the public who have recreational access to the Land pursuant to this Paragraph II B.5. shall also have motor vehicle access over and across the Access Road and shall park in those designated areas referred to as Parking Areas identified for that purpose in Exhibit D attached to this Easement and incorporated herein by this reference. The public may not drive off these designated areas for any purpose, except with the express permission of the Landowner or the Landowner's agent. Upon agreement with the Landowner, the Department may open additional designated roads and parking areas, as allowed for in the management plan. The public may travel on foot from the Parking Areas or from other publicly accessible areas to hunt throughout the Land for the purposes and in the manner prescribed in this Paragraph II.B.5. of this Easement. Furthermore, the public may travel by foot from the Parking Areas to access adjacent publicly accessible lands which allow public recreational use. Upon agreement with the Landowners, the Department may relocate or substitute Access Roads or Parking Areas identified in Exhibit D to protect the Conservation Values or the public.

f. Furthermore, the Department reserves the right to temporarily restrict the public's access to the Land as deemed necessary or appropriate to protect the Land, wildlife or wildlife habitat, or the public.

g. Notwithstanding any provision that may be construed to the contrary, Landowner may deny access to anyone who is not conducting, or has not in the past conducted, herself or himself in a prudent, responsible, and safe manner and denial of access for this reason shall not be deemed preferential or discriminatory.

h. Public access for trapping and wildlife viewing will be directed by the Management Plan. Those members of the public participating in these activities will not count toward the minimum hunter numbers outlined in subparagraph 5.b. above.

i. Except as specifically set forth in this Paragraph II.B.5., this Easement does not grant public access to any portion of the Land for any reason. This Easement does not grant any public right of overnight camping.

j. The Landowner may participate in programs offered by the Department or other entities intended to manage hunting activities or to reimburse or compensate the Landowner for the impacts of hunter use of the Land. However, the Landowner and the Department acknowledge that any such hunter-impact program is administered separately from this Easement; that such program may or may not persist through time; that such program may or may not be offered for the Landowner's participation; and that nothing in this Easement provides any assurance that the Landowner will be offered the opportunity for or be accepted into any such program.

## C. LANDOWNER'S RIGHTS

The Landowner reserves to itself, and to its heirs, successors and assigns, all rights accruing from ownership of the Land, including the right to enter and manage the Land and engage in or permit others to engage in all uses of the Land that (a) are not expressly conveyed to the Department; (b) are not prohibited or restricted by this Conservation Easement; (c) are consistent with the purposes of this Conservation Easement; and (d) do not harm the Conservation Values of the Land. Some of these reserved rights identified in this Section II.C are subject to specified conditions or to the requirement of, and procedures for, obtaining the Department's **Prior Approval**, as described in Paragraph II.G. of this Easement. Without limiting the generality of the previous statements and subject to the restrictions on Landowner's activities in this Conservation Easement set forth in Paragraph II.D. hereof, the Landowner expressly reserves the following rights;

1. **Livestock Grazing.** The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock; provided that any livestock grazing is consistent with a rest-rotation grazing system as approved in writing by the Department as part of the Management Plan described in Paragraph II.E. of this Easement; is in accordance with the "Standards for Grazing Livestock," more particularly described in Exhibit C attached hereto and incorporated herein by this reference; and is consistent with other specific terms in this Easement governing livestock grazing. The Management Plan provides the details of livestock grazing on the Land, including schematic diagrams of the pasture systems to be used through the years. Any changes in the Management Plan must be adopted in a manner consistent with Paragraph II.E. in this Easement, and any grazing system so adopted or revised must continue to conform to a rest-rotation system as described in Exhibit C. For the purposes of this Easement, livestock is defined as cattle; provided, however, that other species of grazing animal may substitute for cattle with **Prior Approval**. Landowner retains the right to graze no more than two horses without **Prior Approval**.
2. **Leasing the Land.** The Land may be leased to another agricultural operator for agricultural purposes, provided that: (i) a written lease must be entered into by the Landowner and the lessee(s); (ii) the lease must require the lessee to follow the terms of the Easement, as well as any applicable provisions of the Management Plan; and (iii) a copy of the executed lease must be provided to the Department. The Landowner retains responsibility under this Easement for ensuring compliance with the terms of the Easement and Management Plan by lessee(s). Lease of the Land, or of a portion of the Land, are subject to **Prior Notice**, so the Department can evaluate and provide input for the Landowner and lessee(s) to assist in compliance with the Conservation Easement, Management Plan and grazing system.
3. **Habitat Restoration and Enhancement.** The right to conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with the Department and consistent with the Management Plan. Any habitat restoration or enhancement project not specifically provided for in the Management Plan requires **Prior Approval**.

4. **Water Resources and Facilities.** The right to use, develop, and maintain water resources, including stock water ponds, ditches, irrigation structures and equipment, canals, pumps and pump sites, pipelines and water wells, necessary for grazing, wildlife, habitat restoration and improvement, domestic use, and all agricultural purposes that are allowed by this Easement; provided, however, any new water development or change in water use or water distribution that would have a significant adverse impact on a perennial or ephemeral river or stream, streamflow, wetlands, or riparian vegetation is prohibited. Maintenance of canals, ditches, culverts and drains – including the periodic removal of vegetation as necessary to keep water management facilities in operational condition – is not a violation of this Easement. Additionally, it is understood that maintenance of reservoirs, ditches and other water-resource facilities may involve removal and deposit of accumulated soil and organic matter, and the Department hereby agrees that such soil and organic matter may be removed from the water-resource facilities and deposited on the Land at or near the location of the removal activity in a manner customary to such operations and consistent with the Conservation Values.
5. **Man-made Structures.** Landowner has the following rights pertaining to man-made structures (in addition to those rights for structures and facilities for water use and irrigation development that are provided in Paragraph II.C.4.):
  - a. The right to construct, remove, maintain, renovate, repair, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted agricultural land management purposes. Any fence or other barrier that would significantly impact wildlife habitat or wildlife movement or migration on or through the Land is prohibited; however, this prohibition does not apply to corrals, windbreaks and other structures necessary to confine livestock, or protect silage storage, or haystacks.
6. **Roads.** To construct new and maintain existing roads and bridges or waterway crossings in connection with farming, ranching, or timber management as herein permitted. Any road, bridge, or waterway crossings constructed for one or more of such purposes shall be sited and maintained so as to minimize adverse impact on the Conservation Values. Any new road construction (but not including maintenance of existing roads) shall be subject to the **Prior Approval** of the Department, as set forth in Section II.G of this Easement. The Department's approval shall be contingent on confirmation that (a) the road's intended purpose is permitted by this Easement, (b) its location will not result in significant soil erosion, and (c) the new road shall not materially disturb wildlife or wildlife habitat or other protected Conservation Values. The Landowner's written request for approval shall include a construction plan describing the purpose of the road, its location on a topographic map and, to the extent deemed necessary by the Department, discussion of the following: road grade, drainage, erosion/sedimentation impacts and mitigating efforts, areas of cut and fill, and special concerns like culvert placement, bridges, fords, buffer strips between roads and streams, and fish and wildlife impacts and mitigating efforts. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds on exposed cuts, fills and banks is required on any new road construction.

7. **Noncommercial Recreational Use.** Landowner reserves to themselves and to their immediate family the right to use the Land for noncommercial recreational purposes, including hunting and fishing, in accordance with Section II.B.5. and Section II.D.9.

8. **Utilities.**

a. *Existing Utilities.* Landowner retains the right to maintain, repair, and upgrade utilities existing on the Land at the time of the grant of this Easement, including utility structures, lines, conduits, cables, wires, or pipelines (“Utilities”).

b. *New Utilities on the Land.* Subject to **Prior Approval**, Landowner retains the right to install and construct new Utilities upon, over, or beneath the Land to existing or subsequently constructed structures and improvements that are expressly permitted on the Land by this Easement. Prior to construction of new Utilities, the Landowner shall submit to the Department a Utility Plan as provided in Paragraph II. C.8.d. (“Utility Plan”) below.

c. *New Utilities serving adjacent properties.* Subject to **Prior Approval**, the Landowner retains the right to construct new Utilities and grant any associated Utility right-of-way easement serving adjacent properties. Prior to the construction of new Utilities, the Landowner shall submit to the Department a Utility Plan as provided in Paragraph II. C.8.d. below.

d. *Utility Plan.* Landowner shall contact the Department prior to the preparation of the Utility Plan to obtain the required information to be included in such Plan that the Department deems relevant to its ability to protect the Conservation Values in perpetuity. Landowner and the Department will mutually determine the completeness of the Utility Plan and its adherence to the general and specific intent of this Easement prior to the Department’s approval of the Utility Plan. Any new and expanded Utilities and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of Cascade County, signed by the Landowner, the Department, and the utility service provider prior to construction.

9. **Renewable Energy Generation for Use On the Land.** With the **Prior Approval** of the Department, Landowner reserves the right to construct wind, solar, hydropower and other types of renewable energy generation facilities (“renewable energy production”) solely for uses on the Land, except that any incidental surplus energy may be sold commercially for use off of the Land or credited to Landowner’s utility service. Design and location of facilities and fixtures associated with renewable energy generation is subject to **Prior Approval** of the Department. Any renewable energy production for use on the Land and associated distribution facilities, including transmission lines and pipelines, permitted by this Easement must be consistent with protection and preservation of the Conservation Values. In particular, proposed hydropower generation may not occur if riparian or wetland habitats are impaired.

- 10. Agricultural Chemicals.** The right to use agricultural chemicals for control of noxious weeds, as defined by the State of Montana or other lawful authority with jurisdiction, and other invasive nonnative plants. Such use must be in the amount and frequency of application constituting the minimum necessary to accomplish reasonable control of noxious weeds, and in a manner that will minimize damage to native plants. The Landowner shall have the right to use biological control agents for noxious weed control, provided that these biological agents have been approved for the specified use by appropriate governmental agencies; and further provided that livestock used for weed control shall comply with the grazing system in Exhibit C unless otherwise authorized by **Prior Approval**. The aerial application of herbicide to control noxious weeds is subject to **Prior Approval**, unless otherwise specified in the management plan.
- 11. Regulation of Public Use.** The right to regulate public use of the Land at all times; subject, however, to the right of public recreational access granted to the Department in Paragraph II.B.5.
- 12. Oil and Gas Exploration, Extraction, and Development.** The right to explore for and extract oil and gas in, on, or under the Land, subject, however, to the following conditions:
- a. Landowner may explore for and extract oil and gas only if such activity will not result in significant impairment or interference with the Conservation Values.
  - b. Development of oil and gas may only be conducted by subsurface methods (e.g., well drilling) and must be conducted in a manner consistent with site-specific stipulations as mutually agreed upon by the Department and the Landowner and as necessary to protect the Conservation Values. Under no circumstance may any oil or gas be removed by any surface mining method; it being understood, however, that wells may be drilled and hydrocarbon minerals may be removed at the ground surface, which shall not constitute surface mining as used herein.
  - c. No oil and gas exploration, development or extraction activity may take place within or upon wetland and riparian areas, and no oil and gas operation may degrade the quality of any surface water, stream, or ground water. Any water degraded in quality resulting from permitted exploration or extraction activities must be piped off of the Land or, subject to **Prior Approval**, disposed of by other methods.
  - d. Any incidental surface disturbance resulting from permitted exploration or subsurface extraction activities must be limited, localized, and temporary, and the surface shall be restored upon completion of such activities to a condition similar or equivalent to its state prior to the disturbance by reclaiming land contours, by restoring soils, by replanting and tending native vegetation until the vegetation is mature, established, and self-perpetuating.
  - e. Access for exploration or extraction activities shall be by existing roads; provided, however that, subject to **Prior Approval**, a new road for this purpose may be

- constructed if such road is sited and maintained so as to avoid adverse impacts to the Conservation Values. Any new road shall be restored as nearly as practicable to its previous condition after exploration and extraction activities are concluded.
- f. No refinery or secondary production facility may be located on the Land. Any oil and gas developed or produced from the Land must be transported from the Land in a manner that does not impair the Conservation Values, and the method of and facilities for such transport are subject to **Prior Approval**. The number and kind of structures used in the exploration for or extraction of oil and gas shall be limited to the minimum necessary to accomplish exploration, development or extraction. Upon the termination of any phase of exploration, development or extraction, all associated structures (that are not necessary for the subsequent phase) shall be removed and those portions of the Land no longer being used for the oil and gas operation shall be restored as nearly as practicable to their previous condition.
  - g. For oil and gas and other mineral rights held by a third party, Landowner agrees to notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party. Landowner and the Department shall confer to review the proposed activity and to determine ways to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Landowner and the Department shall subsequently cooperate in an effort to influence the third party to adopt recommended mitigating measures in the third party's exploration and development activities. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.
  - h. The Landowner must provide **Prior Notice** to the Department before entering into any lease or other agreement for oil and gas exploration or development on the Land.

**13. Subdivision and Conveyance of Land Ownership.**

- a. For the purposes of this Easement, the Land shall be considered to be comprised of one parcel, as described in Exhibit A and shown in Exhibit B. The Landowner and the Department mutually intend that the parcel shall be maintained in unified title as a single unit. Further, for the purposes of this Easement, any other parcel designation existing at or subsequent to the date of the conveyance of this Easement, including but not limited to government lots, aliquot parts, and certificates of survey, are considered to be an integral part of the parcel within which they are located, and may not be divided, subdivided, separated or conveyed separately from the entirety.
- b. The Landowner may sell, grant, donate, bequeath or otherwise convey the Land in its entirety to another party.
- c. Landowner shall provide the Department with **Prior Notice** before entering into an agreement that would commit the Landowner to convey the Land to another party. The purpose of this notice is to afford the Department with the opportunity to review

the proposed conveyance document and any associated legal agreement to ensure consistency with the provisions of this Paragraph II.C.13.

**14. Localized Gravel Extraction.** Subject to the express limitations set forth in this Paragraph, Landowner reserves the right to extract gravel, rock, and earthen fill from one location on the Land, the gravel pit site described on the attached Exhibit D which is incorporated by reference (“Gravel Pit”). Landowner and the Department agree that the portion of the Land described in Exhibit F has a borrow pit located upon it as of the date of this Easement, and that the product of the borrow pit historically has been used in conjunction with agricultural practices that are permitted by this easement without impairing the Conservation Values of the Land. The Department therefore agrees that limited earthen fill, gravel or rock extraction from that portion of the Land Described in Exhibit F is consistent with the protection of the Conservation Values identified in this Easement, provided:

- A. The size of the Gravel Pit shall not exceed .25 acre.
- B. Under no circumstances may earthen fill, gravel, or rock be extracted or mined commercially, nor may it be removed from or used off the Land for any purpose.
- C. Any disturbed area in excess of the permitted acreage must be reclaimed, recontoured, and reseeded with a seed mixture that is native or is representative of adjacent perennial plant species.

#### **D. RESTRICTIONS ON LANDOWNER’S ACTIVITIES**

Any activity on or use of the Land that is inconsistent with the purposes and terms of this Easement is prohibited. Without limiting this general prohibition, the following activities and uses are expressly prohibited or restricted.

- 1. Timber.** Landowner shall not transfer, encumber, sell, lease, or otherwise sever any timber right from the Land; except, however, Landowner may sell the rights to harvest timber for a specific forest management action authorized and approved under the provisions of II. D. 2.
- 2. Vegetation Removal.** The destruction, removal, control, or manipulation of native vegetation, planted nesting cover, or permanent cover is prohibited, except as part of or incidental to land uses specifically allowed by this Easement or as provided below:
  - a. *For firewood, fencing, corrals, protection and maintenance.* The Landowner is permitted to harvest timber for firewood, fencing, and corrals to be used on the Land as provided for in the Management Plan. The Landowner is also permitted to harvest timber and other woody vegetation for the protection of persons and property; and for maintenance of roads and trails. All timber harvested pursuant to this paragraph by the Landowner must be disposed of or used on the Land.

- b. *For habitat enhancement or disease control.* Subject to **Prior Approval** by the Department, the Landowner may conduct other forest management activities only for the primary purpose of restoring or enhancing wildlife habitat or for controlling forest disease. Any request to perform forest management activities must be accompanied by a timber management plan prepared by a qualified forester or other qualified natural resource professional. The Landowner and the Department will mutually determine the completeness of the plan and its adherence to the general and specific intentions of this Easement prior to the approval of the plan and the initiation of any timber harvest.

### **3. Wetland and Riparian Areas.**

- a. For the purpose of this conservation easement, riparian areas are defined as vegetation zones adjacent to streams, springs, and wetlands including banks and adjacent uplands and are influenced by adjacent flowing or standing water or groundwater.
  - b. The draining, filling, dredging, leveling, burning, ditching, or diking of any natural or manmade wetland or riparian area, streambank stabilization, or any other activity that significantly impacts any such area is prohibited. However, wetland areas may be restored, developed or enhanced, by either the Landowner or the Department, to benefit wildlife and to further the purposes of the Easement as a part of a restoration activity approved under Paragraph II.C.3.
  - c. The control, removal, or manipulation of any trees, willows, or other woody vegetation by any means is prohibited, except as needed for the ordinary course of maintaining roads, fences, utility lines, and ditches provided for and allowed under this Easement or as may be allowed by the Department as part of an approved plan specifically directed to improve fish or wildlife habitat.
4. **Subdivision.** The legal or de facto division or subdivision of the Land is prohibited. For the purposes of this Easement the legal or de facto division or subdivision of Land shall include, but shall not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Land is divided into lots or in which legal or equitable title to different portions of the Land are held by different owners. The Landowner may not indirectly subdivide all or any part of the Land through the allocation of property rights among partners, shareholders, or members of any legal entity (including a homeowners' association), the creation of a horizontal property regime, interval or time-share ownership arrangement, leasing, partitioning among tenants-in-common, judicial partition, or by any other means. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Notwithstanding any other provision of this Paragraph to the contrary, however, the Landowner may lease the Land for agricultural purposes subject to the terms of this Easement and the Management Plan described in Paragraph II.E. of this Easement.

The Land may not be used as open or natural space or parkland for any subdivision or development purposes or requirements on land not covered by this Easement, nor may the Landowner transfer any development or subdivision rights separate from the Land.

5. **Water Rights.** Landowner will not transfer, encumber, sell, lease, or otherwise separate water rights from the Land. If Landowner receives notice or becomes aware of a situation under which water rights may be lost from the Land, Landowner shall notify the Department, and the parties may work cooperatively to address the situation.
6. **Agricultural Chemicals.** The use of herbicides, biological control agents, and pesticides in a manner other than as provided for in Paragraph II.C.10. is prohibited.
7. **Roads.** The construction of roads in a manner other than as provided for in Paragraph II.C.6. is prohibited.
8. **Land Cultivation.** The cultivation or farming of any portion of the Land is prohibited, except for habitat restoration or enhancement activities authorized pursuant to the terms of this Easement.
9. **Commercial Recreation.** The sale or lease of access to the Land for hunting or fishing or other recreational purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting or fishing operation, or charging fees (sometimes known as trespass fees) for hunting or fishing on the Land or for access across the Land to reach public land or other private land, is prohibited.
10. **Mineral Exploration and Development.** Landowner may not engage in, authorize, or contract for any exploration for or development and extraction of minerals, coal, ore, bentonite, oil and gas, other hydrocarbons, soils, rock, or similar materials, except as provided for Paragraphs II.C.12. and II.C.14. Any other mineral exploration, development, or extraction is prohibited.
11. **Buildings and Structures.** The construction or placement of any structure or building on the Land is prohibited, other than as expressly allowed in Paragraphs II.C.4., II.C.5., II.C.8., and II.C.12.
12. **Residential Use.** Residential use of the Land or any portion thereof is prohibited other than as expressly allowed in Paragraphs II.C.5., II.C.6., II.C.9., and II.C.13.
13. **Commercial Feedlot.** The establishment or operation of a commercial feedlot is prohibited. A commercial feedlot is defined for purposes of this Easement as a permanently constructed confined area or facility within which the Land is not grazed or cropped annually, for the purposes of engaging in the business of the reception and feeding of livestock for hire. Nothing in this Easement shall be construed to prevent Landowner from seasonally confining livestock in areas for feeding, lambing, calving, or similar activities, and nothing herein shall prevent Landowner from leasing pasture,

corrals and agricultural improvements to third parties, subject to the terms of this Easement.

**14. Shooting Preserve, Wildlife Propagation and Related Activities.** The use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo or menagerie, or in connection with the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a genetic or disease threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not indigenous to Montana, is prohibited; however, Landowner has the right to have ranch dogs and household pets on the Land. This prohibition does not apply to common domestic livestock, or to the introduction, transplantation or release of fish or wildlife species on the Land by the Department, which must have the consent of the Landowner for any such introduction, transplantation or release on the Land.

**15. Commercial and Industrial Use.** Except as permitted in Section II.C., the establishment or operation of any commercial or industrial uses of or activities on the Land, including, but not limited to, guest ranching, outfitting, restaurant, night club, campground, trailer park, motel, hotel, commercial swimming pool, gas station, retail outlet, or facility for the manufacture or distribution of any product other than products to be grown or produced on the Land in connection with agricultural purposes expressly permitted under Paragraph II.C. of this Easement is prohibited.

**16. Waste Disposal.** The processing, dumping, storage or disposal of waste, refuse and debris on the Land is prohibited; provided, however, that the deposit of natural organic material derived from livestock and crop production on the Land, and the deposit of material from water-resource facility maintenance activities provided for in Paragraph II.C., are not considered waste disposal.

**17. Hazardous Materials.** Any petroleum products, explosives, hazardous substances, toxic substances, and any other substance which may pose a present or potential hazard to human health or the environment shall not be released or dumped on the Land at any time, and shall not be stored or used, except as lawfully stored and used in necessary quantities for agricultural purposes and except as part of the oil and gas exploration and development activities specifically provided in this Easement. The installation of underground storage tanks is prohibited.

#### **E. MANAGEMENT PLAN**

The parties to this Easement developed a Management Plan for grazing management, public access and public use management, wildlife habitat enhancement and restoration, wildlife passage improvement measures, and other matters pertaining to the management of the natural resources of the Land under this Easement. The Management Plan has been signed by the Landowner and the Department, and represents a contractual agreement between the parties to abide by its specific requirements, management actions, and restrictions. However, if there is any inconsistency between the terms of the Management Plan and this Easement, the terms of this Easement control. The parties shall meet periodically as needed to review the Management

Plan and, if deemed necessary, to propose amendments. Any amendment to the Plan must have the written consent of both parties.

In the event that the Land is to be conveyed or has been conveyed to a new owner (“Successor in Interest”), the Department agrees to enter into discussions with the Successor in Interest for the purpose of reviewing the existing Management Plan and determining any revisions that might be appropriate to facilitate management of the Land in a manner consistent with the terms of the Easement and protection of the Conservation Values. The Successor in Interest may sign, acknowledge and thereby continue the Management Plan that is in effect at the time of the transfer of ownership, or the Successor in Interest may sign and acknowledge a revised Management Plan agreed upon by the Department. However, in the event that the Successor in Interest has not executed with the Department a continuation of the existing Management Plan or a revised Management Plan, then the Management Plan in effect at the time of the ownership transfer shall remain in full force and effect.

#### **F. EASEMENT BASELINE REPORT**

The parties agree that an Easement Baseline Report (“Baseline Report”), including photographs, maps, surveys, studies, reports, and other documentation, has been completed by a Department biologist or natural resource professional familiar with the area, reviewed by the Department and Landowner, and acknowledged by them, in writing attached as Exhibit F, to be an accurate representation of the physical and biological condition of the Land and its nonresidential physical improvements as of the date of the conveyance of this Easement. The original Baseline Report shall be maintained in the files of the Department and shall be made available to Landowner for inspection and reproduction at Landowner’s request. The parties intend that the Baseline Report shall be used by the Department to monitor Landowner’s compliance with the terms and conditions of this Easement. In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy. From time to time, with the agreement by the Landowner, the Department may prepare (or have prepared) an Updated Easement Baseline Report to document any habitat restoration or other improved habitat conditions. Upon review and approval of the updated report by the Landowner and the Department, the improved conditions documented in the Updated Easement Baseline Report shall be considered the baseline conditions to be conserved and against which the impacts of future activities shall be evaluated.

#### **G. PRIOR NOTICE AND PRIOR APPROVAL**

1. Whenever **Prior Notice** is required under this Easement, Landowner must notify the Department as provided for in this section in writing not less than 30 days prior to the date the Landowner intends to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowner shall give Grantees as much notice as is possible under the circumstances. The purpose of requiring the Landowner to notify the Department prior to undertaking certain permitted activities is to afford the Department an opportunity to ensure that such activities

are designed and carried out in a manner consistent with this Easement and its Purposes.

2. Whenever **Prior Approval** is required under this Easement, Landowner must notify the Department in writing not less than 45 days prior to the date the Landowner intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or by courier, or personal delivery, or email, and must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Department to make an informed judgment as to its consistency with this Easement and its Purposes. The Department has 45 days from its receipt of such notice to review the proposed activity and to notify the Landowner of any objections to the proposed activity. If it is possible that the proposed activity can be modified to be consistent with the terms of the Easement, the Department shall inform the Landowner of the manner in which the proposed activity as modified may be conducted. The Department's response to Landowner's notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or emailed. In the event the Department denies the Landowner's proposed activity, the Department must provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.
3. If the Department fails to respond to Landowner's notice of Prior Approval within 45 days of their receipt of the notice, the proposed activity shall be deemed to be inconsistent with the terms of this Easement and thereby denied.
4. The Landowner shall be under no liability or obligation for any failure to give Prior Notice or seek Prior Approval for any activity undertaken by the Landowner necessitated by virtue of fire, flood, acts of God, or other element, or any other emergency reasonably deemed by Landowner to exist; provided, however, after such an event, if there is damage to the Conservation Values, the Landowner shall notify the Department of any such damage as soon as practicable.
5. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or email, addressed as follows:

To Landowner:           Rumney Cattle Company  
                                  P.O. Box 87 Whitmore Road,  
                                  Cascade, Montana 59421

To Department:         Department of Fish, Wildlife & Parks  
                                  Attention: Administrator, Wildlife Division  
                                  1420 E. Sixth Avenue  
                                  P.O. Box 200701  
                                  Helena, MT 59620-0701

With a copy to: Department of Fish, Wildlife & Parks  
Attention: Regional Supervisor  
4600 Giant Springs Road  
Great Falls, MT 59405

or to such other address as the parties from time to time shall designate by written notice to the others. The parties shall provide each other current contact information, including phone numbers and email addresses. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if sent by courier or mailed, on the earlier of receipt or five business days after deposit thereof with a courier or mail service, return receipt requested. Email notices shall be deemed effective upon delivery to recipient.

#### **H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES**

If the Department determines that the Landowner has violated the terms of this Easement, or if the Landowner undertakes any activity requiring approval of the Department without first obtaining such approval, the Department shall give written notice to the Landowner of the violation and demand corrective action sufficient to cure the violation, and, when the violation involves injury to the Land resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Land so damaged. If the Landowner:

1. Fails to cure the violation within 30 days after receipt of notice from the Department, or
2. Under circumstances where the violation cannot reasonably be cured within a 30 day period, fails to begin curing the violation within the 30 day period (or, within 30 days of Landowner's receipt of notice from the Department, if Landowner fails to agree with the Department in writing on a date by which efforts to cure such violation will reasonably begin), or
3. Fails to continue diligently to cure such violation until finally corrected,

the Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement. The Department may seek to enjoin the violation, by temporary or permanent injunction, to require the restoration of the Land to the condition that existed prior to any such injury, and, if restoration is not possible to fully compensate for injury to the Conservation Values, to recover monetary damages for to which it may be entitled for violation of the terms of this Easement.

If the Department, in its sole discretion, determines that a violation is threatened or imminent or that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, the Department may pursue its remedies under this paragraph without prior notice to the Landowner or without waiting for the period provided for cure to expire.

The Department's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement. The Landowner agrees that the Department's remedies at law for any violation of the terms of this Easement are inadequate. Accordingly, the Department is entitled to the injunctive relief. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate the Department and the public

for the loss and damage to the Department's rights, the Department shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of scenic, aesthetic, or natural resource values. Without limiting Landowner's liability therefore, the Department, in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Land. The Department's remedies described in this section are cumulative and are in addition to all remedies available at law or in equity.

Nothing contained in this Easement may be construed to entitle the Department to bring any action against the Landowner for any injury to or change in the Land resulting from causes beyond the Landowner's control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

Enforcement of the terms of this Easement is at the discretion of the Department, and any forbearance by the Department to exercise its rights under this Easement in the event of any breach of any term of this Easement by the Landowner may not be deemed or construed to be a waiver by the Department of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by the Department in the exercise of any right or remedy upon any breach by Landowner may impair the right or remedy or be construed as a waiver, nor may any forbearance or delay give rise to a claim of laches, estoppel or prescription.

Costs of restoration of the Conservation Values that are attributable to Landowner's violation or breach of the terms of this Easement shall be borne by Landowner, unless a court orders otherwise or unless the parties mutually agree to share such costs. In any action arising from the terms of this Easement, each side shall bear its own costs and attorneys' fees. .

If a dispute arises between Landowner and the Department concerning interpretation of the meaning of this Easement or concerning the consistency of any proposed use or activity with the terms or purposes of this Easement, and if Landowner agrees in writing not to proceed with the use or activity pending resolution of the dispute, either Landowner or the Department may refer the dispute to mediation by request made in writing to the other party. Within 10 days of receipt of such referral, Landowner and the Department will select an impartial mediator who shall conduct the mediation and thereby assist the parties in resolving the dispute cooperatively. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Landowner and the Department agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this Paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section II.G.

#### **I. HOLD HARMLESS AND INDEMNITY**

The Landowner shall hold harmless and indemnify the Department and its employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical

damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Land, as a result of the negligence or willful misconduct of the Landowner or their agents, employees or contractors, unless due to the negligence or willful misconduct of the Department or its agents, employees, or contractors. Nothing herein shall create any indemnity obligation by the Landowner to the Department for any hunter, angler, or recreational user of the property, unless such loss or injury is due to the negligence or willful misconduct of the Landowner or its agents, employees or contractors.

The Department similarly agrees to hold harmless and indemnify the Landowner and its employees, agents and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property, resulting from any action, omission, condition, or other matter related to or occurring on or about the Land, as a result of the Department's exercise of its rights granted under this Easement, unless due to the negligence or willful misconduct of the Landowner or its agents, employees or contractors.

#### **J. TERMINATION, EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT**

This Easement constitutes a real property interest immediately vested in the Department. It is the unequivocal intention of the parties that the conservation purposes of this Easement are carried out in perpetuity. If, however, circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The parties agree that changed economic conditions may not be considered as circumstances justifying the modification, termination or extinguishment of this Easement.

If this Easement is extinguished by judicial proceedings, or should any interest in the Land be taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation with the **Prior Approval** of the Department, the Department is entitled to a proportional share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. The Landowner and the Department shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is entitled.

For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Land unencumbered by the Easement remains constant as determined as of the date of this grant. The parties agree that this ratio is 56 percent, as was determined by independent appraisal at the time of the grant of this Easement, and the parties further agree that the value of any future interest of the Department will not include any value attributable to authorized improvements to the Land made by the Landowner after the date of this grant. Therefore, in the event of any whole or partial judicial extinguishment, or eminent domain or purchase in lieu of condemnation, Landowner shall be entitled to receive from the financially liable party 44 percent of the unencumbered value of the real property and the Department shall be entitled to receive 56 percent of the unencumbered value of the real property. The Department shall use all such

proceeds that it receives in a manner consistent with the conservation purposes of this Easement.

#### **K. SUBORDINATION**

If at the time of conveyance of this Easement, the Land is subject to a mortgage [or Deed of Trust or Contract for Deed] or other security interest, in favor of \_\_\_\_\_[Bank], [address] (“Lienholder”). Said Mortgage/Deed of Trust/Abstract of Contract for Deed was recorded on \_\_\_\_\_, in Book \_\_\_\_\_, page \_\_\_\_\_, under Document No. \_\_\_\_\_, Records of \_\_\_\_\_ County, Montana (the “Mortgage”). The Lienholder has agreed by separate Subordination Agreement, which will be recorded immediately after this Easement is granted, to subordinate its rights in the Land to this Easement to the extent necessary to permit the Department to enforce the purpose of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the Lienholder or other holders of a security interest. The priority of the existing mortgage or other security interest with respect to any valid claim to the proceeds of the sale or insurance, or to the leases, rents, and profits of the Land is not affected by this Easement. All provisions contained in this Section II.K., shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

#### **K. ASSIGNMENT**

This Easement is transferable, but the Department may assign this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under the laws of the state of Montana. As a condition of any assignment, the Department shall require that the conservation purposes of this Easement are to be carried out in perpetuity.

#### **L. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Easement would be appropriate as set forth in the Department’s Amendment Policy, the Landowner and the Department are free to jointly amend this Easement; provided that no amendment may be allowed that will affect the compliance with or the qualification of this Easement under any applicable laws, including § 76-6-101, *et seq.*, MCA, or §170(h) of the Internal Revenue Code, as amended. Any amendment must be consistent with the purposes of this Easement, may not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited inurement or private benefit to the Landowner or any other parties. Any Easement amendment must be in writing, signed by both parties, and recorded in the public records of Cascade County.

## **M. RECORDING**

The Department shall record this instrument in a timely fashion in the official records of Cascade County, Montana, and may re-record it at any time as may be required to preserve its rights in this Easement.

## **N. REPRESENTATIONS AND WARRANTIES**

Landowner represents and warrants that, after reasonable investigation and to the best of their knowledge:

1. Landowner has clear title to the Land; that Landowner has the right to convey this Conservation Easement; and that the Land is free and clear of any encumbrances, except those encumbrances that have been expressly approved by the Department.
2. Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Land prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Land, in violation of applicable law.
3. No underground storage tanks are located on the Land, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Land in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.
4. Landowner and the Land are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Land and its use.
5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Land, other than the ongoing statewide adjudication of water rights in Montana.
6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Land or its use, nor do there exist any facts or circumstances that Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

## **O. GENERAL PROVISIONS**

1. Controlling Law. The interpretation and performance of this Easement will be governed by the laws of the State of Montana.
2. Construction. Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of § 76-6-101, *et seq.*, MCA. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes

of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid.

3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section II.L. above.
4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.
5. Successors. This Easement is binding upon, and inures to the benefit of the parties, their heirs, administrators, successors and assigns, and continues as a servitude running in perpetuity with the Land.
6. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer survive transfer.
7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement are not affected.
8. Subordination. No provision of this Easement is to be construed as impairing the ability of Landowner to use the Land as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.
9. Subsequent Deeds and Instruments. The Landowner agrees that reference to this Easement will be made in any subsequent purchase and sale agreements, deeds, or other legal instruments conveying an interest in the Property (including any leasehold interest).
10. Counterparts. This Easement may be executed in counterparts which, taken together, shall constitute one and the same instrument.
11. Joint Obligation. The obligations imposed by this Easement upon Grantor shall be joint and several.

TO HAVE AND TO HOLD unto the Department, its successors, and assigns FOREVER.

IN WITNESS WHEREOF, the Landowner and the Department have set their hands on the day and year first above written.



**ACKNOWLEDGEMENTS**

STATE OF MONTANA            )  
  : ss.  
COUNTY OF CASCADE        )

This instrument was acknowledged before me on \_\_\_\_\_, 2018,  
by\_\_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

DRAFT

**EXHIBIT A – LEGAL DESCRIPTION**

Township 18 North, Range 3 West, M.P.M., Cascade County, Montana

Section 2: All

Section 3: All, except that portion lying North of Birdtail Road as it presently exists

Section 9: E1/2, E1/2W1/2

Section 10: All

Section 11: W1/2

Section 14: W1/2, W1/2SE1/4, W1/2W1/2NW1/4NE1/4, W1/2E1/2SW1/4NE1/4,  
W1/2SW1/4NE1/4

Section 15: All

Township 19 North, Range 3 West, M.P.M., Cascade County, Montana

Section 34: S1/2SE1/4, except that portion lying North of Birdtail Road as it presently exists

Section 35: S1/2S1/2S1/2

-- END OF LEGAL DESCRIPTION --



# EXHIBIT C

## FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK

### Introduction

The following grazing standards represent the minimum required by FWP of a landowner who reserves the right to pasture and graze livestock (private and public land). These standards apply to all FWP funded projects; at times it may be necessary to provide more rest from grazing than described as minimum to meet specific wildlife or fisheries habitat objectives. The minimum is most frequently applied (without additional adjustment for wildlife and fisheries needs) on projects like conservation easements and Upland Game Bird Habitat Enhancement Projects where the property remains in private ownership and agricultural use remains the primary objective. On FWP WMAs, wildlife production and habitat conservation are the primary objective and when livestock grazing occurs it is not unusual for the amount of rest from livestock grazing to exceed that required by the minimum standard. Also, on some areas where wildlife production is the primary objective, grazing intensity may be reduced to a level significantly lower than allowable by the minimum standard. These standards are designed to address management of both upland and riparian landforms.

### Why a minimum standard?

Livestock grazing is the predominant land use in Montana. As the state's primary fish and wildlife management agency, FWP is actively involved with livestock grazing as it influences fish and wildlife habitats throughout Montana. About 2.4 million cattle are maintained in Montana. Livestock grazing occurs on about 69% of the state's land surface. Potential impacts to fish, wildlife, and their habitats caused by grazing are well documented in the literature. Also well documented are potential benefits for conservation that can be derived for some wildlife species through carefully planned livestock grazing strategies. Conserving wildlife habitat while continuing livestock grazing typically requires management strategies that differ from those employed for the sole purpose of maintaining a sustainable livestock forage base that maximizes livestock production. One reason for the difference in management strategies is because vegetation is much more than a forage base for wildlife. Vegetation species composition, structure, and diversity are important aspects of cover essential to the survival and production of wildlife. Healthy riparian communities are critical not only for aquatic species but for proper channel and flood plain function. Seventy-five percent of all Montana wildlife species rely on riparian areas for all or a portion of their lives. This includes many species covered in the FWP's Comprehensive Fish and Wildlife Strategy. When livestock grazing occurs, it is not unusual for cover to be the population limiting factor for many species. Aldo Leopold referred to this concept of habitat quality as 'Quality of Landscape'. Addressing cover is especially important in the implementation of FWP's Comprehensive Fish and Wildlife Strategy. It is therefore possible that a livestock operator may be employing a grazing strategy that maintains a sustainable forage base on most of the property, but may not be providing adequate forage, cover, or floral diversity for important fish and wildlife species.

Sustainable livestock production often employs grazing strategies emphasizing production and maintenance of grass species while placing less emphasis on the maintenance of forbs and woody plants. Many wildlife species require grazing strategies that emphasize healthy woody plants and availability of forbs and grass seed heads on at least portions of the landscape every year. The maintenance of robust woody vegetation and cover is also a very important component of healthy

riparian systems. Healthy ecological systems are essential for a variety of aquatic and terrestrial riparian obligates.

The purpose of FWP's minimum grazing standards to achieve a balance between maintaining sustainable agriculture and quality fish and wildlife habitat on working ranches yet provide flexibility to conserve and protect habitat needs where they are the primary objective and agriculture is secondary. FWP has applied the standard successfully over the past 30 years on a variety of projects ranging from working cattle ranches to FWP WMAs. There are examples in Montana and other states where a grazing standard similar to FWP's is being applied by livestock operators independent of FWP.

## **Grazing plan**

Prior to grazing livestock the Landowner and FWP must agree upon and implement a grazing plan. A grazing plan includes a map of the pastures, a grazing formula specific to those pastures, the class of livestock, and other information pertinent to the management of livestock. Format for the grazing plan is included as part of the management plan template for conservation easements. The grazing plan will be included as part of the management plan for easement projects, and will define the limits and extent to which grazing may occur. The Management Plan may be amended by mutual consent, as more particularly described in Paragraph II.E. of the Conservation Easement. For other projects the management plan will be included as an attachment to the grazing lease or contract. On conservation easements the grazing plan will be enforceable only on lands covered by the easement.

## **Upland Minimum Standards for Summer/Fall Systems**

This standard applies to upland pastures in native plant communities (i.e., generally on soils that have never been plowed) and for all riparian pastures. The grazing plan must meet or exceed minimum levels of periodic rest from livestock grazing allowing native plants adequate opportunity to reproduce and replenish root reserves. The minimum amount of rest required for any pasture grazed in one year during the plant growing season is defined as rest throughout the following year's growing season (i.e., grazing deferred until seed-ripe), followed by one year of yearlong rest, as shown in Table 1. Each pasture receives only one grazing treatment per year, and the treatments are rotated annually as shown in Table 1. The growing season is defined as beginning with the period of rapid plant growth (generally early to mid-May) until seed-ripe for the latest maturing native grasses, such as bluebunch wheatgrass or western wheatgrass (generally early August). Because the exact dates can vary as much as a few weeks depending on the location in Montana, specific dates for livestock movement are developed for each project. Occasionally it may be necessary for the grazing system to allow for some livestock to be in the pasture scheduled for the A treatment (Table 1) beyond the growing season.

A three-pasture grazing system is used as an example (Table 1) to show the landowner might typically rotate livestock through pastures to meet the minimum levels and required sequence of rest from livestock grazing. In practice, the landowner is not limited to any particular number of pastures; many projects include more than three pastures. In some instances, sub-pastures are employed to meet riparian or other objectives on the land. If livestock are grazed, they must be moved through the pastures in compliance with these standards and the grazing plan. Where grazing occurs during the growing season, the three-treatments outlined in Table 1 are essential and the total number of pastures and/or sub-pastures will vary between projects.

Table 1. Livestock Grazing Formula using a three-pasture approach as an example.

Grazing Seasons*	Pasture 1	Pasture 2	Pasture 3
Year One	A	B	C
Year Two	B	C	A
Year Three	C	A	B

\*When all treatments have been applied to all pastures, the grazing rotation begins again at Year One.

A = livestock grazing allowed during the growing season

B = livestock grazing begins after seed-ripe time

C = rest from livestock grazing yearlong

### Winter and/or Early Spring Grazing

In some situations, an early grazing treatment (prior to mid-May) may be considered. However, it must be kept in mind that grazing capacity and forage production in the year a pasture is grazed from winter to beyond mid-May, will be temporarily reduced. On projects where early spring grazing (prior to rapid plant growth) is combined with summer (active growing season) grazing the three grazing treatments described in Table 1 must be employed.

It is usually more efficient to manage winter grazing separately from spring-summer grazing. If livestock are to be grazed in a native range or riparian pasture in winter or early spring (generally December through early May), and a separate grazing formula is required, it must be coordinated with the summer-fall grazing system as follows: Minimum required rest in pastures where livestock are grazed and/or fed hay during winter is one winter of rest in every two years. Hay, grain, salt, protein, or other supplements will not be placed in riparian areas during winter or any other season. Minimum required rest in pastures where livestock are grazed in spring, prior to early May, is one spring of rest in every two years. Any pastures grazed later in spring than early-mid May require the greater amount of rest shown in Table 1. As a minimum, when grazing is limited to winter or the non-growing season period, a two-pasture alternate use approach is frequently used. The area designate for winter grazing is divided into two pastures and each year one pasture is grazed during winter months and the other rested and use is alternated from year to year.

During winter months cattle tend to concentrate in wooded areas (shrub or tree-dominated areas) for shelter. This must be kept in perspective when assessing the impacts to woody vegetation. It is often the case that with careful placement of hay, cattle impacts to woody vegetation to protect it from damage, but should only be done once efforts to control livestock distribution by other means have proven ineffective. An acceptable level of impact will vary depending on the objectives (i.e., a level of woody vegetation impact acceptable for a working cattle ranch may be much different than for a WMA).

### Scope

The goal is to include as much of the lands under easement as possible within the grazing system, but one must be realistic in recognizing the animal husbandry needs of a livestock operation. It may be necessary to set aside small areas as animal husbandry units to be used at the landowner's discretion. Such areas might include calving pastures, branding pastures, sorting pens, bull pastures, or holding corrals. As long as the majority of the lands involved are within a grazing system, meeting the minimum standards, this is acceptable.

## **Non-native Pasture**

It is common for livestock operators to have pastures on their land that are non-native range. The landowner's goal is usually to keep these pastures productive as non-native pasture. The pastures typically are seeded with an exotic pasture grass or grass mix. On occasion forbs like dry-land alfalfa are included in the planting. The FWP minimum grazing standard does not apply to these pastures. In cases of non-native pasture a grazing strategy that is coordinated with the grazing system and meets the needs of the ranch should be worked out. In the case of crested wheatgrass pasture it may be necessary to allow grazing early (late-winter or early spring) each year to maintain palatability. In the case of other pasture grasses, such as smooth brome, a deferred approach works well; a pasture is grazed during the growing season in Year One then deferred from grazing until near seed-ripe in Year Two (about the time such grasses would normally be harvested as hay). This will maintain the productivity of the non-native species until replanting is necessary and in some cases maintain them as attractive feeding sites for large wild ungulates. It is important to keep in mind that these areas, unlike native range, are essentially cropland and whether grazed or left idle will eventually need some sort of agricultural practice to maintain their productivity.

It is usually best to leave irrigated pasture management to the landowner's discretion. If important riparian is included in the field it might be necessary to fence the riparian zone from the irrigated pasture to protect it from livestock grazing. Usually grazing strategies employed on irrigated pasture are not consistent with proper management of key native riparian plants. In such situations it may be necessary to apply the guideline series entitled: *The Need for Stream Vegetated Buffers Parts 1 through 3*, Montana Department of Environmental Quality 2008.

Livestock operators often place cows in hayfields during winter months. In such cases the field should be managed at the landowner's discretion and in some instances it might be necessary to fence out riparian from the hayfield to protect it from grazing.

## **Stocking Rate**

Usually FWP does not require a maximum stocking rate as part of the grazing strategy on easements or Upland Game Bird Habitat Enhancement Projects. In such cases it is clearly stated in the grazing plan, that the maximum stocking rate will be ultimately determined by the operator's ability to conform to the grazing system. In other words the livestock numbers may increase as long as the plan can be followed and livestock movement dates are not compromised. Such an approach is consistent with the reality that, for most easement projects, the primary use of the land is agricultural.

Occasionally a landowner has requested that an upper limit stocking rate be established as a stipulation in the easement. As long as the number of livestock is realistic this is not a problem.

On lands owned by FWP any grazing that occurs will be at stocking levels determined by the agency and approved by the FWP Commission.

## **Mineral and Other Supplements**

On privately owned grazing lands the landowner is given more discretion on locations for placement of mineral block than on FWP lands. However, regardless of land ownership the placing of mineral block within riparian areas will be strongly discouraged. On FWP lands the placement of

mineral block will be described as part of the grazing plan. Supplements will be placed away from riparian areas, ponds, and roads. Rocky (stable soil) areas on ridge tops or in the trees are preferred sites.

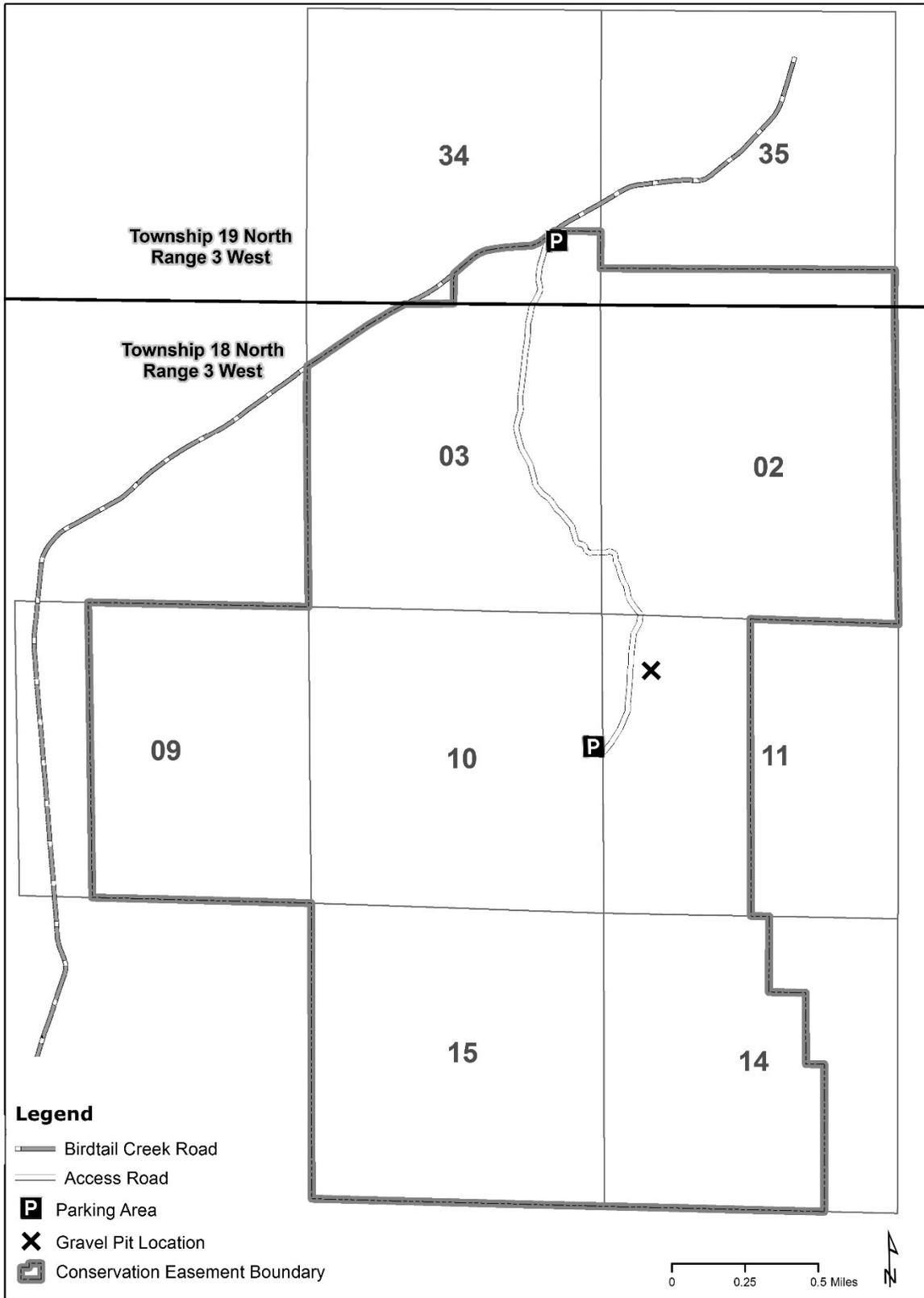
On FWP lands livestock within pasture grazing systems are not to be fed hay.

### **Flexibility**

Rarely, a severe environmental influence (i.e., fire, drought, grasshoppers) may require a onetime deviation from the prescribed grazing plan. In such cases the landowner is to notify the local FWP representative of the problem. In a timely manner the local FWP representative, Habitat Section representative, and landowner will meet to discuss the issue and work out a solution. It is important to keep in mind that short term adjustments to the grazing plan must be the exception rather than the rule. Allowing grazing to occur in a pasture scheduled for rest is always a last resort. FWP has managed grazing systems across Montana through a variety of severe environmental events. This experience has shown that when a legitimate problem exists an alternative can usually be found that avoids grazing the pastures scheduled for rest.

DRAFT

**EXHIBIT D**





**Region 4 Wildlife Division**

**DRAFT BIRDTAIL CONSERVATION EASEMENT  
MANAGEMENT PLAN**



This Management Plan, dated as of \_\_\_\_\_, 2018, is entered into by Rumney Cattle Company, Inc., aka Rumney Cattle Co. whose address is P.O. Box 87 Whitmore Road, Cascade, Montana 59421, (hereafter referred to as the “landowner” or “Rumney Cattle Company”) and Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (hereafter referred to as “FWP” or the “Department”).

This Management Plan is being entered into pursuant to Section II.E. of that certain Deed of Conservation Easement and Public Access Easement granted by the Rumney Cattle Company, Inc., aka Rumney Cattle Co. to the Department on \_\_\_\_\_, 2018 and recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ of the records of Cascade County, Montana.

This Management Plan serves as a flexible link between Conservation Easement (CE) terms intended to endure in perpetuity and changeable conditions and situations on the land. It is a living document, to be reviewed periodically by FWP and the landowner, and to be amended as needed upon agreement of both parties. Its function is to document strategies for land management in which FWP and the Rumney Cattle Company would be cooperating to ensure consistency with the terms and intent of the CE. The principal strategy is periodic meetings with the landowner and field monitoring of compliance with CE terms. Additionally, this Management Plan details strategies for managing native, riparian and/or wetland habitats, noxious weed control efforts, and public recreational access as guaranteed by the CE document.

**I. INTRODUCTION**

The purpose of the CE is to preserve, protect, and restore upon mutual agreement with the Landowner, in perpetuity the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety of plant and wildlife species, and to prevent any use that will interfere with the Conservation Values of the Land. The Landowner and the Department intend the CE to limit the uses of the Land to those activities that are consistent with the purposes of the Easement.

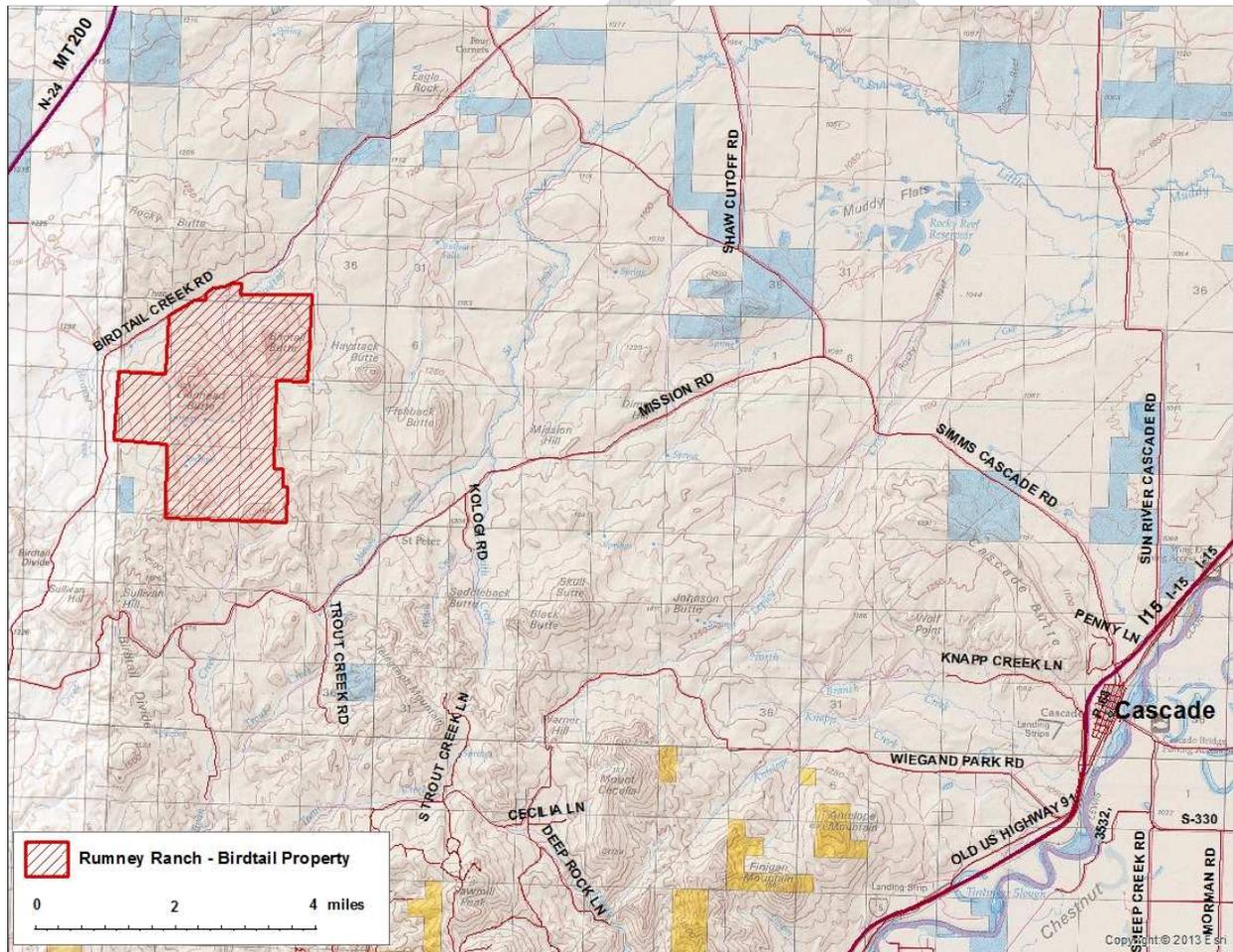
The land included in this Management Plan is identified by the Department and the landowner as the “Birdtail”. This land encompasses approximately 3,980 deeded acres and is located approximately 15 miles northwest of Cascade (Figure 1). This acreage consists of approximately 245 acres (6%) of shrubland habitat, 125 acres (3%) for each of forest and floodplain/riparian habitats, 165 acres (4%) of cliff/canyon/talus slopes, and the rest (~ 84% or 3,429 acres) is composed of native grasslands.

**TABLE 1.** Legal description of the Birdtail CE property.

Township 18 North, Range 3 West, M.P.M., Cascade County, Montana
Section 2: All
Section 3: All, except that portion lying North of Birdtail Road as it presently exists
Section 9: E1/2, E1/2W1/2
Section 10: All
Section 11: W1/2
Section 14: W1/2, W1/2SE1/4, W1/2W1/2NW1/4NE1/4, W1/2E1/2SW1/4NE1/4, W1/2SW1/4NE1/4
Section 15: All
Township 19 North, Range 3 West, M.P.M., Cascade County, Montana
Section 34: S1/2SE1/4, except that portion lying North of Birdtail Road as it presently exists
Section 35: S1/2S1/2S1/2

The Birdtail is primarily characterized as intermountain foothill grassland ecotype with intermixed riparian and shrub steppe habitat communities. These habitat types in Central Montana are key in maintaining stable native species populations, including several “Species of Concern”. The native range and riparian areas are excellent wildlife habitat to include important breeding, rearing and wintering habitats for a variety of wildlife (game and non-game). The Birdtail provides year round habitat in varying degrees for seven (7) big-game species: elk, antelope, mule and white-tailed deer, black bear, mountain lion and bighorn sheep. It also provides quality upland game bird habitat for sharp-tailed grouse, Hungarian partridge and mountain grouse (ruffed and blue grouse). These habitats are beneficial in maintaining huntable and viewable populations of game and non-game species, both migratory and resident. Approximately 1.5 miles of Birdtail creek (a small upper tributary of the Missouri River drainage) flows through the northern portion of the property. It is unknown whether any fish species inhabit the creek.

**FIGURE 1.** Rumney Cattle Company Birdtail CE location.



## II. GOALS, OBJECTIVES, CONCERNS AND STRATEGIES

**GOAL 1: By implementation of FWP easement terms, the quality and amounts of native habitats and wildlife presence currently found on the Birdtail property shall be maintained without displacing current private land use.**

**OBJECTIVE 1:** Manage the various native vegetative habitats to maintain and/or improve these plant communities for the benefit of wildlife and livestock alike.

**Strategy 1a:** Maintain and/or enhance native grassland, shrubland, and riparian habitat types for wildlife habitat through conservation easement protections.

*Grassland Habitat:* The Birdtail is primarily characterized as an intermountain foothill grassland ecotype with intermixed riparian communities and scattered shrub steppe. The majority of the Birdtail (just over 80%) consists of native grassland habitat, although some exotic grass species have been introduced over time. The removal or manipulation (sod busting) of native grasslands is prohibited by the terms of the easement document. Vegetation manipulation through implementation of a livestock (cattle) grazing system is allowed.

The grassland habitat type is composed of grass species such as rough fescue, Idaho fescue, blue bunch wheatgrass, green needle grass, western wheatgrass, prairie junegrass, basin wildrye, orchard grass, Kentucky bluegrass, smooth and mountain brome and sandberg bluegrass. Some forbs commonly associated with the landscape include flax, aster spp., goldenrod, lupine, arrow leaf balsamroot, sticky geranium, phlox, blanket flower, and common yarrow, to name a few.

This Management Plan requires implementation of a livestock (cattle) grazing system which will ensure native upland and riparian habitats are maintained and/or enhanced for the long-term (Appendix A). Boundary fences are in good condition, but will require normal and routine maintenance. The condition of invasive plant species (weeds) on the property is relatively good due to the annual efforts by the landowner to manage range conditions (Whitetop being the most prominent weed occurrence in some isolated areas), although annual maintenance of invasive plant species will continue to be important. Fence maintenance and weed control efforts will continue to be the responsibility of the landowner.

*Shrubland Habitat:* Woody shrub and tree species are critically important to wildlife. Dominant woody species found on the property include rose, skunk bush sumac, chokecherry, buffalo berry, currant, snowberry, aspen, willow, birch, alder and dogwood. The removal, control or manipulation of shrub and tree species by any means is prohibited within the terms of the easement document, including but not limited to burning, plowing, chemical treatment or removal of such tree and shrub species. These prohibitions do not apply to the routine clearing or control of brush in connection with the construction and maintenance of trails, roads, cattle travel corridors, fences and structures permitted under this easement. The grazing system (Appendices A & B) is designed to help ensure woody vegetation is maintained and/or enhanced through time. Future shrub and/or tree management may be deemed necessary for other wildlife habitat benefit, but would need to be further defined within this management plan and agreed upon by both parties.

*Wetland and Riparian Habitat:* As previously noted, only a small percentage (<5%) of the Birdtail consists of important riparian habitat types. Removal or manipulation (farming, sod busting) of native wetland and riparian areas is prohibited within the terms of the easement document. These prohibitions do not apply to the routine clearing or control of brush in connection with the construction and maintenance of trails, roads, fences, cattle travel corridors and structures permitted under this easement.

**OBJECTIVE 2:** Maintain and/or enhance existing native and wildlife friendly plant communities, as well as agriculture habitats. This shall be accomplished via implementation of a grazing management plan (Appendix C) involving a rest-rotation grazing system that meets or exceeds the FWP minimum grazing standards (Appendix D).

**Strategy 2a:** To perpetually define and ensure sound grazing practices, this easement requires a grazing system which incorporates complete rest of native, riparian, and wetland habitats in given years and/or portions of a given year.

This property is capable of sustaining livestock use under sound management practices, however, unregulated or excessive grazing has the potential to reduce habitat quality for wildlife. Reduced habitat quality often results in wildlife population reductions and/or displacement. Grazing plan adherence will be monitored by FWP to assess effectiveness and landowner compliance. Fish, Wildlife & Parks, in conjunction with the landowners, may recommend fence, water or other improvements, if deemed necessary.

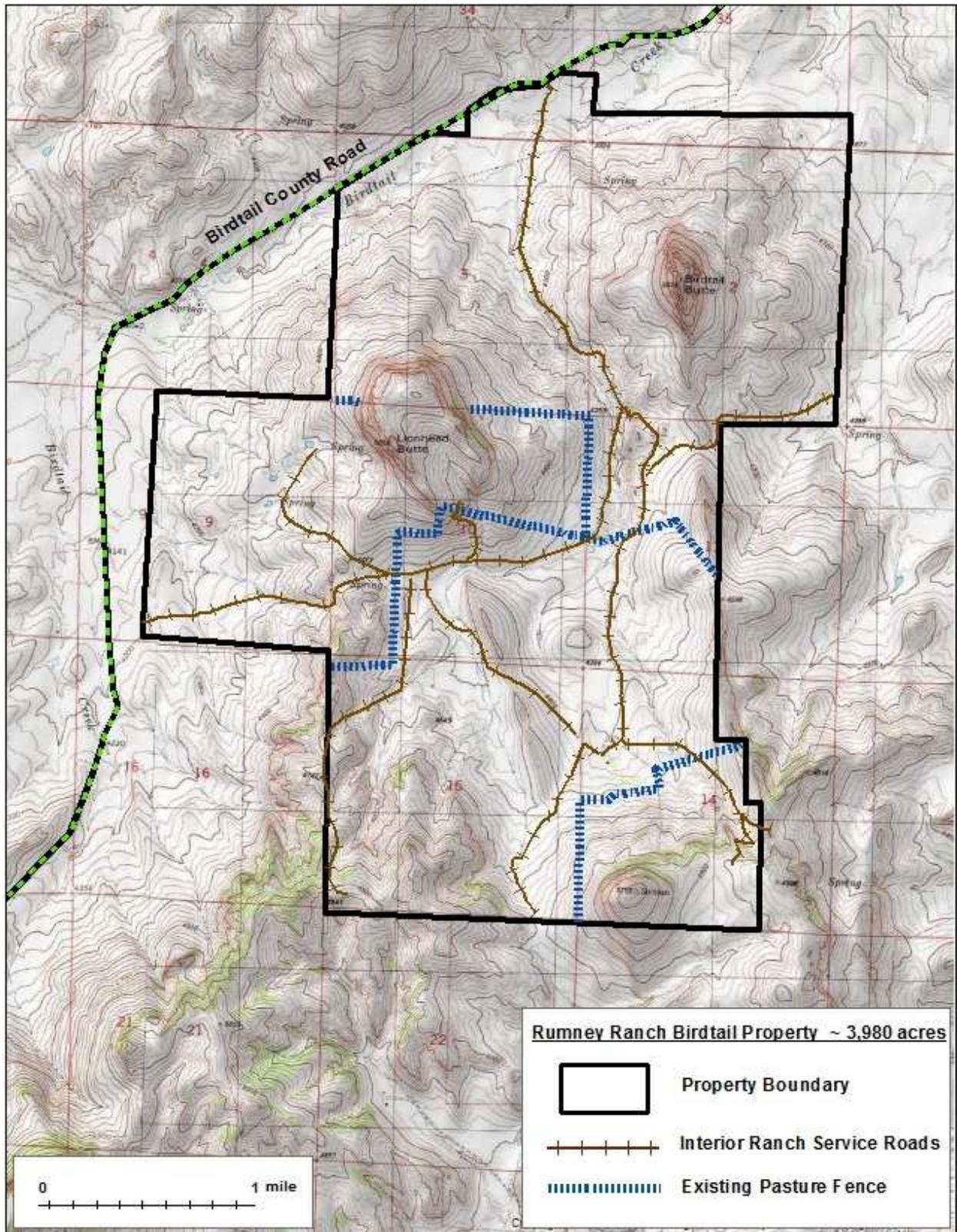
The grazing system occurs on the entire Birdtail conservation easement (approximately 3,980 acres). For pasture names, delineations, seasons of use etc., see Appendix C.

**Strategy 2b:** There are no cultivated agricultural fields associated with this property and as such, sod busting, tilling and/or haying of undisturbed vegetation (native rangeland, native riparian and wetland vegetation) is not permitted under this conservation easement. Although no fish/wildlife habitat restoration and/or enhancement projects are currently underway or being proposed, this easement does allow for future implementation of such projects as long as they have prior approval and are consistent with the CE and this management plan.

**Strategy 2c:** As part of maintaining and/or improving native plant communities, invasive plant (weed) maintenance is permitted and encouraged under this management plan. The landowner currently conducts some of this maintenance via aerial chemical application (spraying), which will be allowed to continue under this management plan, as long as this method of application does not significantly impact native plant species.

**Strategy 2d:** In conjunction with conservation easement terms, the landowner has the right to construct, remove, maintain, repair, or replace fences, corrals, and other livestock handling structures necessary for agricultural land management purposes, provided the structures do not significantly impact wildlife habitat or wildlife movement on and/or through the land (Figure 2). Land maintenance, including, but not limited to fence and water development construction and repair, noxious weed control, and necessary existing road repair, shall be the responsibility of the landowner. Creation of new interior service roads on the property is not allowed without prior approval. Any new fence construction must comply with FWP's wildlife-friendly fencing guidelines.

FIGURE 2. Birdtail permanent fence locations and interior ranch service roads.



**OBJECTIVE 3:** Maintain wildlife use of the property.

A primary goal of this easement centers on conserving and enhancing critical native habitats in which all wildlife will benefit in perpetuity. The Birdtail property lies within the Rocky Mountain Front Buffer Tier II Terrestrial Focus Area as identified by Montana’s SWAP (2015). This property provides year round habitat for a variety of game and nongame species. Existing and ongoing wildlife population data for species is limited to elk and antelope for this immediate area. Elk are present on the property throughout the year to varying degrees. Anywhere from 50-300+ elk utilize the property and/or neighboring lands at any given time. The property rests within the Birdtail Hills Elk Management Unit (EMU) which consists of Hunting District’s (HD) 421 & 423. The latest aerial survey observations for this EMU (winter 2015/16) were just under 700 total elk. Elk presence on the property is variable throughout the year, but at times can be quite strong (300+ elk). The property is also located within the HD 440 antelope hunting district. The latest complete aerial survey of this HD (2015) gave way to minimum observations of just over 400 antelope. Antelope presence on the property is variable throughout the year. Bighorn sheep are also present on/around the two Buttes located on the property, but typically in recent year’s amounts to only a handful of individuals. Other big game animals such as mule deer, white-tailed deer, mountain lion and black bear use the property year round to varying degrees.

The Birdtail sustains an assorted array of wildlife species including small and large mammals, birds, reptiles and amphibians, due in large part to the diversity of habitats located on the property. Some of these species are listed as Species of Greatest Conservation or Inventory Need (SGCN / SGIN). According to suitable habitat and range maps generated by Montana Fish, Wildlife & Parks, there are 9 SGCN and 9 SGIN with the potential to occur on this property (Table 2) (SWAP, 2015). Wildlife presence and abundance on the property varies depending on the time of year. This Management Plan will focus efforts on perpetually maintaining and/or enhancing habitats for all game and nongame species.

**TABLE 2.** List of species of greatest conservation and inventory need potentially located on the Birdtail property as identified within range maps in the MT State Wildlife Action Plan (2015).

Species of Greatest Conservation Need	Species of Greatest Inventory Need
<b>Mussels</b>	
- Western Pearlshell ( <i>Margaritifera falcata</i> )	
<b>Amphibians</b>	
- Northern Leopard Frog ( <i>Rana pipiens</i> )	
- Great Plains Toad ( <i>Anaxyrus cognatus</i> )	
<b>Birds</b>	
- Chestnut-collared Longspur ( <i>Calcarius ornatus</i> )	- Black-billed Cuckoo ( <i>Coccyzus erythrophthalmus</i> )
- Mountain Plover ( <i>Charadrius montanus</i> )	- Common Poorwill ( <i>Phalaenoptilus nuttallii</i> )
- Lewis’s Woodpecker ( <i>Melanerpes lewis</i> )	- Great Gray Owl ( <i>Strix nebulosa</i> )
	- Short-eared Owl ( <i>Asio flammeus</i> )
	- Barrow’s Goldeneye ( <i>Bucephala islandica</i> )
<b>Mammals</b>	
- Dwarf Shrew ( <i>Sorex nanus</i> )	- Spotted Bat ( <i>Euderma maculatum</i> )
	- Yuma Myotis ( <i>Myotis yumanensis</i> )
	- Porcupine ( <i>Erethizon dorsatum</i> )
<b>Reptiles</b>	
- Milksnake ( <i>Lampropeltis triangulum</i> )	- Greater Short-horned Lizard ( <i>Phrynosoma hernandesi</i> )
- Western Hog-nosed Snake ( <i>Heterodon nasicus</i> )	

Specific game damage complaints are not anticipated on this property since no cultivated acreage/activity (i.e., hay fields, grain production, hay storage, etc.) is present. However, participation in future FWP management season frameworks (outside commission established hunting season dates) in conjunction with adjacent landowners may be warranted. Fish, Wildlife and Parks provides the latter opportunities on an as needed basis to landowners who allow reasonable free public hunting access.

**GOAL 2: Provide guaranteed public recreational and hunting access opportunities.**

**OBJECTIVE 1:** Maintain managed public recreational access for hunting, fishing, trapping and other wildlife viewing on deeded land.

Strategy 1a: As per FWP Conservation Easement terms, the property will be open to public hunting for game animals and game birds of all sex and age classes in accordance with hunting regulations adopted by the State of Montana. The fall hunting seasons for big game and birds in which hunting will be allowed is generally defined from September 1 to January 1 of the following year. The parties further agree that the general season may be extended or seasons may be added by mutual agreement through the Management Plan. The Landowner has the right to manage the distribution of hunters on the Land to address reasonable concerns for the safety of persons and property, including livestock. Trapping is allowed only by prior reservation with the landowner. For further information related to public hunting and trapping access and opportunities, see Appendix A.

Wildlife viewing will be available throughout the year with prior direct notification to the landowner. The landowner has the right to direct public activity during this period to limit activity with respect to cattle presence on the property. The landowner may not charge fees, lease, or commercially outfit fishing, hunting, trapping, or charge trespass fees on deeded land. This Management Plan further defines that recreational access.

Motorized public access will originate from the Birdtail County Road and extend into the ranch to the established parking area described in Appendix B. Big game hunting, upland game bird hunting and trapping will occur only in accordance with regulations established by the Montana Fish & Wildlife Commission. Hunting and recreational access rules are detailed in Appendix A and B. Trapping may be permitted only by prior reservation with the landowner. The landowner has the right to direct public activity during this period so as to limit activity with respect to cattle presence on the property.

As per CE terms, the landowner(s) may deny access to, or expel from the land, any person not conducting, or has not in the past conducted, herself or himself in a prudent, responsible, and safe manner and denial of access for this reason shall not be deemed preferential or discriminatory.

**III. OVERALL FWP / RUMNEY RANCH BIRDTAIL CONSERVATION EASEMENT COMPLIANCE**

In order to document existing wildlife habitat, vegetative communities and distribution will be photographed and mapped for a FWP “Easement Baseline Inventory Report”. This is necessary so that changes can be monitored over time. Annual monitoring will be conducted to determine compliance with the FWP easement terms on the entire property. Monitoring visits shall be conducted by FWP, preferably with the landowner(s), to assess Management Plan effectiveness and to review landowner compliance with easement terms. The landowner is encouraged to thoroughly familiarize themselves with the Deed of Conservation Easement terms and Management Plan, and refer to such documents or contact FWP with any questions or concerns to avoid non-compliance.

## LITERATURE CITED

Montana's State Wildlife Action Plan. 2015. Montana Fish, Wildlife & Parks, 1420 East Sixth Ave, Helena, MT 59620. 453 pgs.

DRAFT

## **Rumney Ranch (Birdtail) Management Plan Attachments**

Birdtail Conservation Easement Recreational Access Rules (Appendix A)

Birdtail Conservation Easement Recreational Access Map (Appendix B)

Birdtail Conservation Easement Grazing System (Appendix C)

FWP Minimum Standards for Grazing Livestock (Appendix D)

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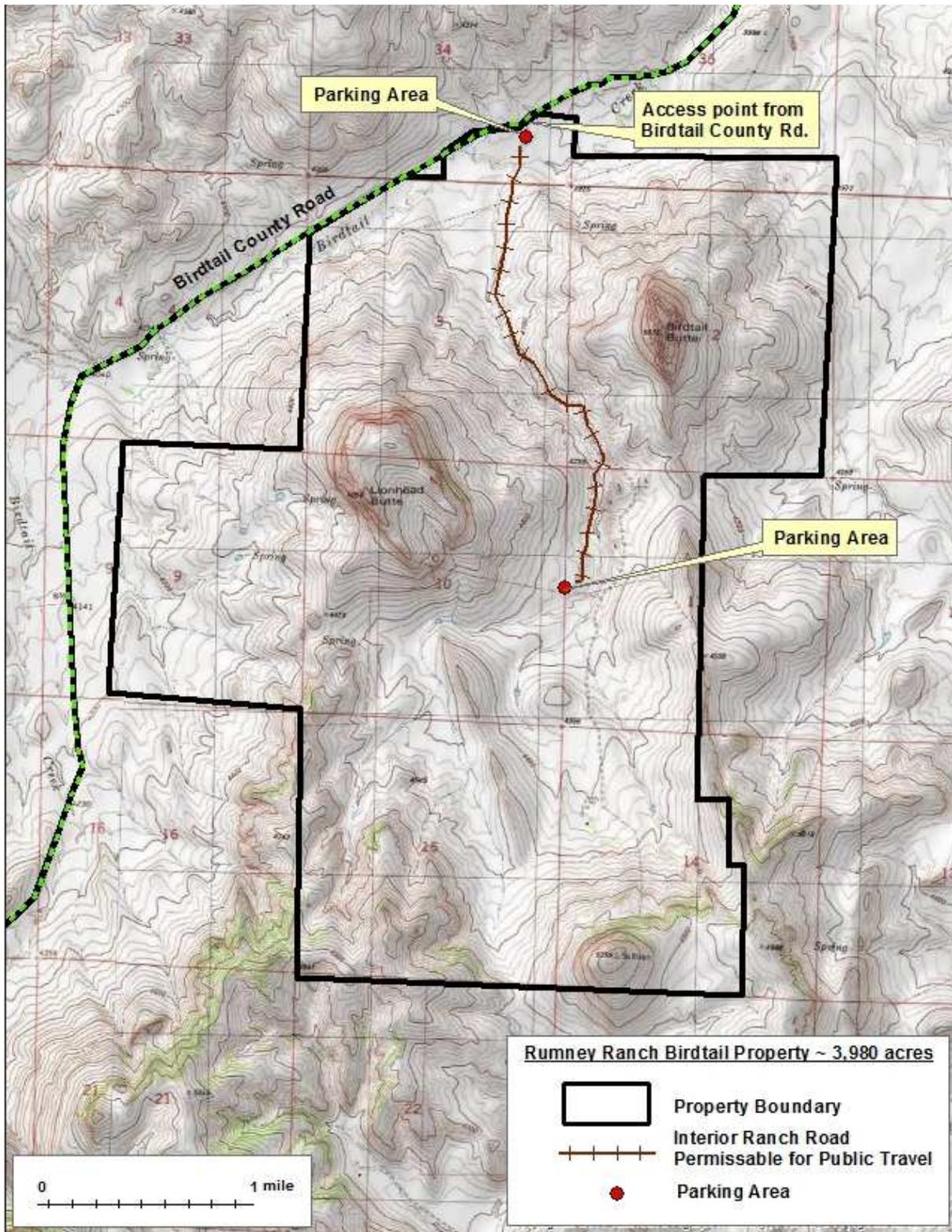
## **Appendix A.**

### **Birdtail Conservation Easement Recreational Access Rules**

- 1) The Birdtail Conservation Easement is open to public hunting during the fall general big game and game bird hunting seasons (dates as set by the Fish & Wildlife Commission – see current hunting regulations). The property is located within FWP’s Deer/Elk hunting district 421 and Antelope hunting district 440.
- 2) Hunting access will be managed through the FWP Block Management Program and is known as the Birdtail Butte Block Management Area (BMA). This BMA is open during established hunting seasons, currently September 1 through January 1, and is open for all legally available game species. All hunters must sign in at the sign in box daily before hunting commences. The public access location and parking areas are identified in Appendix B. Hunters must be prepared to retrieve harvested game via non-motorized means. For further information on other BMA hunting rules and regulations please refer to current specific terms for this BMA.
- 3) As/if this property in the future is not enrolled in the BMA program and as per terms of the conservation easement, future public hunting access will remain available and redefined in the Management Plan upon mutual agreement between the landowner and FWP.
- 4) No target shooting allowed.
- 5) No camping or open fires permitted on the property.
- 6) No hunting in the immediate vicinity of livestock.
- 7) Wildlife viewing (with the exception of trapping) is available throughout the year with prior direct notification to the landowner. The landowner has the right to direct public activity during this period to limit activity with respect to cattle presence on the property.
- 8) Trapping is allowed only by prior reservation with the landowner.

## Appendix B.

### Birdtail Conservation Easement Recreational Access Map



# **APPENDIX C.**

## **BIRDTAIL CONSERVATION EASEMENT GRAZING SYSTEM**

### **1) LAND UNIT DESCRIPTION**

The Rumney Ranch Birdtail Parcel encompasses approximately 3,980 deeded acres and is located about 15 miles northwest of Cascade (Figure 1). Acreage consists of approximately 245 acres (6%) of shrubland habitat, 125 acres (3%) for each of forest and floodplain/riparian habitats, 165 acres (4%) of cliff/canyon/talus slopes, and the rest (~ 84% or 3343 acres) is composed of native grasslands. There are no grazing leases on state or federal lands associated with this grazing system. This grazing plan is designed to meet the ranch needs and meet FWP grazing standards.

### **2) CURRENT MANAGEMENT SUMMARY**

The Rumney Cattle Company is currently managed as a cow-calf pair and yearling livestock operation (Black Angus Cattle). The Birdtail portion of the ranch currently is utilized by approximately 300 cow/calf pairs. Depending on the year, 80-100 yearlings may also be present on the property.

Typically, livestock arrive on the Birdtail in the spring (May). Within the pasture, the area east of Birdtail Butte is used very little due to lack of water. Instead, cattle focus more along the creek next to the main interior access road. Livestock are then moved south into the next large pasture where they spend most of the summer. This pasture has natural barriers, including a large ridge, and also has some underutilized areas in the southwest corner, which comprises steep topography and pines. These differences can result in uneven use by livestock. The remaining pastures receive variable use, depending on the year. The pasture located west of Lionhead Butte is, at times, grazed by a portion of the livestock that graze the pasture that is used most of the summer. The southeastern most pasture which contains Sullivan Point, has grazing potential on top of the point, but has steep topography reaching it and therefore receives less use than its potential. Lionhead Butte has good grazing potential on top of the butte, but has very little access to it. At times yearlings have grazed here.

### **3) PLANNED MANAGEMENT NARRATIVE WITH TABLES AND MAPS**

The Birdtail comprises one contiguous parcel of land, currently consisting of 4 permanent pastures. In addition to the permanent fences already in place, smaller sub-pastures will be established by constructing new fence and natural barriers. These sub-pastures (later defined as “pastures”) will help with distributing and balancing grazing across the larger permanent pasture areas. Locations of approximate boundaries are illustrated in Figure 3 and are the result of the discussions during the field tour and landowner meetings.

To keep within FWP grazing standards for summer grazing, 3 sets of pastures will be developed in order for a portion of the ranch to receive each of the treatments prescribed in a 3 treatment rest rotation grazing system. In this case, a portion of the ranch would be available for an early treatment, or growing season grazing, which would occur between the dates of May 1 – July 31. A portion would be available for a late treatment, or post-seed ripe grazing, which would occur between the dates of August 1 until October 15, when weaning/shipping of calves occurs. The start of the late treatment period is based on seed ripe of the latest growing perennial native

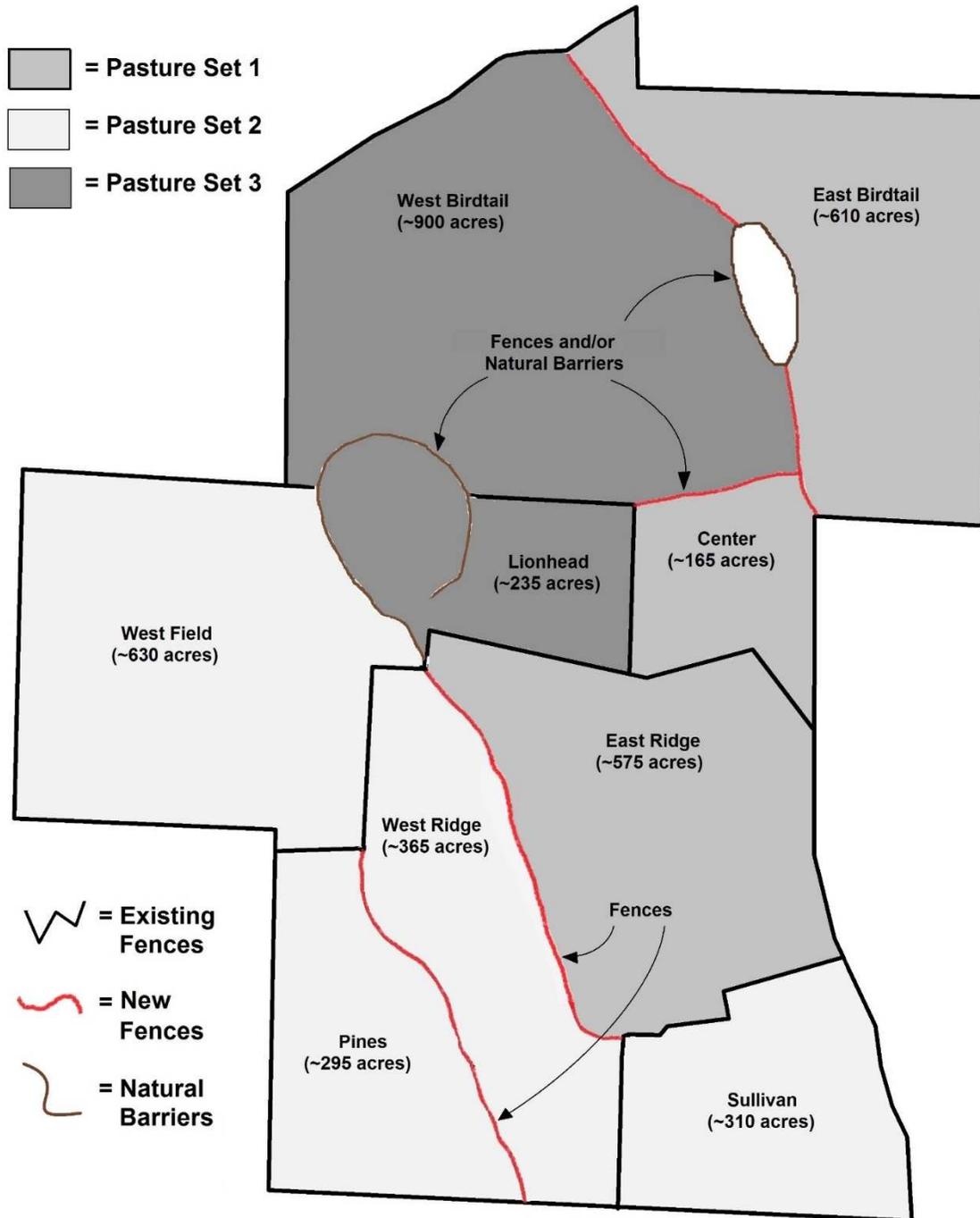
grass, which in this case is bluebunch wheatgrass. The remaining portion of the Birdtail would receive the rest treatment, where no livestock grazing occurs during that calendar year.

One set of pastures (Pasture Set 1) comprises 3 pastures named East Birdtail, Center, and East Ridge Pastures (Figure 3/Table 3). These pastures are approximately 610 acres, 165 acres, and 575 acres, respectively, for a cumulative total of approximately 1,350 acres. East Birdtail Pasture would be created by installing new fence and Birdtail Butte and would require development of the spring on the Butte. Center Pasture would be created by placing a new fence in a general east/west direction located east of the existing Lionhead Pasture. This fence would possibly follow the trail that extends down from Birdtail Butte to the main trail. The East Ridge Pasture would be created by placing a new fence from the south border of Lionhead Butte to the natural volcanic ridge, and then south from the ridge towards the old homestead site and Sullivan Point.

Another set of pastures (Pasture Set 2) comprises 4 pastures, which were given the names Sullivan, West Ridge, Pines, and West Field Pastures (Figure 3/Table 3). They are approximately 310 acres, 365 acres, 295 acres, and 630 acres, respectively, for a cumulative total of approximately 1,600 acres. However, due to topography and trees, Sullivan and Pines Pastures have less grazing potential which would reduce usable acreage considerably. The Sullivan Pasture is already in place, but needs some water development to be more usable. The West Ridge Pasture would be defined by the West boundary of the East Ridge Pasture, using the same new fence line and volcanic ridge. The West Ridge and Pines Pastures may be defined by running electric fence through the middle of these two areas. This temporary fence may/may not be needed depending on cattle distribution within these two sub-pastures. Similarly, additional water development may/may not be needed in the Pines pasture as/if the West Ridge and Pines pastures are separated. The West Field Pasture is already in place.

The last set of pastures (Pasture Set 3) comprises 2 pastures, which were given the names West Birdtail and Lionhead Pastures (Figure 3/Table 3). They are approximately 900 acres and 235 acres, respectively, for a cumulative total of 1,135 acres. West Birdtail is relatively dry in the area north of Lionhead Butte, and some water development could enhance livestock utilization in this area. Due to topography, Lionhead Butte Pasture would have grazing challenges and limitations.

**FIGURE 3.** Birdtail pasture delineations. Actual locations of proposed new fence to be constructed may vary slightly from locations noted on the map below.



**TABLE 3.** Summer/early fall grazing schedules for the Birdtail CE.

<b>Birdtail CE: Summer/Early Fall Grazing Schedule</b>									
	<b>Pasture Set 1</b>			<b>Pasture Set 2</b>				<b>Pasture Set 3</b>	
<b>Year</b>	<b>East Birdtail</b>	<b>Center</b>	<b>East Ridge</b>	<b>Sullivan</b>	<b>West Ridge</b>	<b>Pines</b>	<b>West Field</b>	<b>Lionhead</b>	<b>West Birdtail</b>
<b>2017</b>	Early	Early	Early	Late	Late	Late	Late	Rest	Rest
<b>2018</b>	Late	Late	Late	Rest	Rest	Rest	Rest	Early	Early
<b>2019</b>	Rest	Rest	Rest	Early	Early	Early	Early	Late	Late
<b>2020</b>	Early	Early	Early	Late	Late	Late	Late	Rest	Rest
<b>2021</b>	Late	Late	Late	Rest	Rest	Rest	Rest	Early	Early
<b>2022</b>	Rest	Rest	Rest	Early	Early	Early	Early	Late	Late

- **Early:** Grazing from May 1 to July 31
- **Late:** Grazing from August 1 to October 15
- **Rest:** No livestock grazing

NOTE: Seed ripe dates at the end of July, or July 31, will be used as per the presence of bluebunch wheatgrass on this property.

### **GRAZING SCHEDULES**

The Birdtail property serves as one of the ranch’s primary summer grazing ranges for up to 300 pair of cow/calf pairs and on occasion 80-100 yearlings. Cattle usually arrive on this range in the first part of May and leave in the fall, usually by mid October. The following narrative provides further direction and details with respect to pasture use from year to year. This grazing system requires active landowner involvement in order to move cattle from pasture to pasture throughout the annual grazing period(s) as described below. Fish, Wildlife & Park grazing standards require following an annual rotation of the three grazing treatments as fitting with seed ripe, noted earlier. In remaining true to the grazing standards, the landowner does not have discretion to move stock into a late pasture prior to seed ripe, nor is there the option to graze a pasture that is scheduled for rest. The landowner retains the discretion to establish a stocking rate at a level that allows following this rotation. The landowner also has the discretion to move livestock within each pasture set as they see fit, as long as the pasture set receives the scheduled grazing treatment. Further, the landowner has the discretion to stay later in an early-grazed pasture beyond seed ripe, if they choose. Hereafter, this will serve as the definition of "landowner discretion".

Figures 4-6 and Table 3 should be used as reference related to the following narrative descriptions.

## **YEARS 1, 4, 7, ETC. (FIGURE 4)**

*Pasture Set 1* - during Year 1, livestock would arrive no earlier than May 1 into the East Birdtail Pasture. Grazing would occur in this sub pasture at the discretion of the landowner. The fence could then be opened up and livestock would transition into the Center Pasture. This would create a natural flow and progression towards the East Ridge Pasture. Livestock would remain in the Center Pasture at the discretion of the landowner. Livestock would then move into the East Ridge Pasture and remain there for the remainder of the growing season.

*Pasture Set 2* – No earlier than post-seed ripe, livestock would be moved into this set of pastures scheduled for late treatment (August 1 – October 15). Most likely, cattle would use the West Ridge and West Field Pastures the most. However, at the discretion of the landowner, livestock could move through all four pastures in a way that would allow livestock to better utilize the Sullivan and Pines Pastures. In the case of Figure 4, the example movement shows livestock entering first into Sullivan Pasture, where livestock could remain at the landowners discretion, then moving across the West Ridge Pasture into the Pines Pasture, where again; livestock could remain based on landowner discretion. Alternatively, the West Ridge and Pines Pastures could be used in concurrence pending cattle distribution. Ultimately, the more productive pastures (West Ridge and West Field Pastures) would be left until the end, which would help ensure enough forage was available to allow livestock to remain until the end of the grazing period.

*Pasture Set 3* - The two pastures, the West Birdtail and Lionhead Pastures, would be rested completely.

## **YEARS 2, 5, 8 ETC. (FIGURE 5)**

*Pasture Set 3* - During Year 2, livestock would arrive no earlier than May 1 into the West Birdtail Pasture. The Lionhead Pasture would be available for grazing at that time as well. Livestock could graze in one pasture and then in another, or both could be used at the same time. Due to topographical challenges of Lionhead, this could be a potential yearling grazing site. Regardless if it was used for cow/calf pairs or yearlings, the Lionhead and West Birdtail Pastures could be used until the end of growing season, which would be until July 31.

*Pasture Set 1* – No earlier than post-seed ripe, a potential natural flow of livestock into the late treatment pastures would be moving into the East Ridge Pasture first, and at the discretion of the landowner, the Center Pasture could then be opened up to begin natural flow back to the north. At some point based on landowner discretion, the fence between the Center and East Birdtail Pastures could be opened up and livestock could then finish the grazing season east of Birdtail Butte. In this case, it would likely be a good idea to put the close the fence behind the cattle so they are forced to use the East Birdtail Pasture, rather than potentially camp on the Creek in the Center Pasture. At the end of the grazing season (October 15) livestock would be near the county road for an easy exit to late fall and winter grazing ground.

*Pasture Set 2* - The West Field, Pines, West Ridge, and Sullivan Pastures would be rested completely.

## YEARS 3, 6, 9, ETC. (FIGURE 6)

*Pasture Set 2* - During Year 3, livestock would enter the system by trailing from the county road from the west, or by passing through the other pasture sets to reach the West Field, Pines, West Ridge, and Sullivan Pastures that are scheduled for early grazing. As long as the trailing through the pastures scheduled for late use and complete rest is done within reasonable timing, this should not compromise the system. Again, due to the topography and tree density in the Pines and Sullivan Pastures, landowner use of these pastures would be at their discretion. In the example case in Figure 6, livestock would enter the West Field Pasture in early May, and once utilized, they would move into the Pines Pasture. Once utilized, the fence could be opened up and natural flow into the West Ridge Pasture would occur. Alternatively, the Pines and West Ridge pastures could be used in concurrence pending cattle distribution. Livestock could finish the growing season grazing here if desired, or if some (or all) were placed into the Sullivan Pasture to finish the growing season grazing too, it would be up to the landowner to determine what rotation within these pastures works best. Growing season grazing would end July 31.

- In an alternative idea (not illustrated or described), it may be the rotation through these pastures as described for Pasture B in Years 1, 4, 7, etc. (late growing season), which might work best in this year's schedule also, where livestock move into Sullivan first. This would provide a natural flow of livestock from the backside of the ranch north as the summer progresses into fall.

*Pasture 3*- No earlier than post-seed ripe, livestock would move north into Lionhead and West Birdtail Pastures, where they could remain until the end of the late grazing season. Due to the topographical challenges in Lionhead Pasture, use could be at the landowner's discretion within this schedule, where cow/calf pairs or yearlings could use it.

*Pasture Set 1* - The East Birdtail, Center, and East Ridge Pastures would be rested completely.

FIGURE 4.

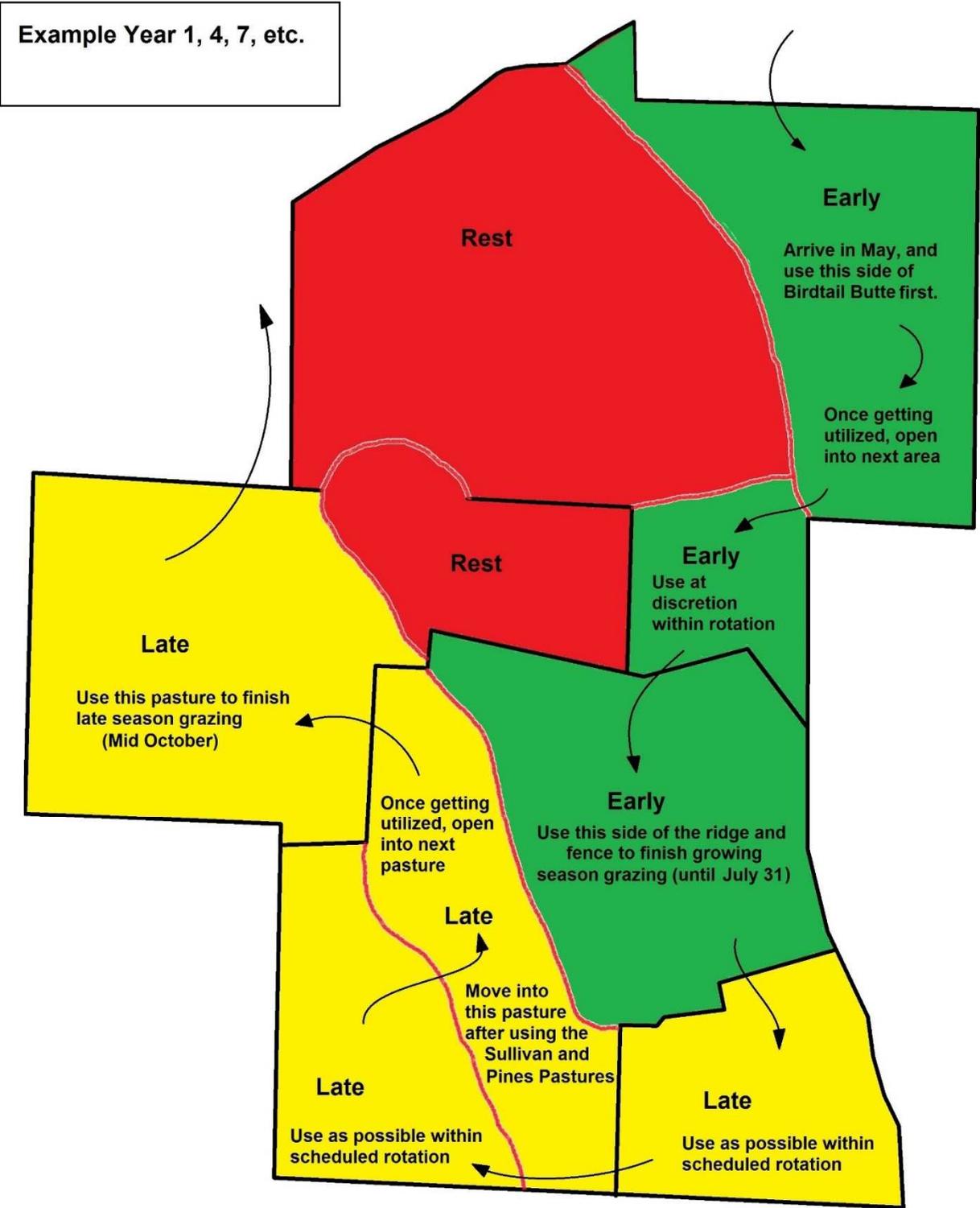


FIGURE 5.

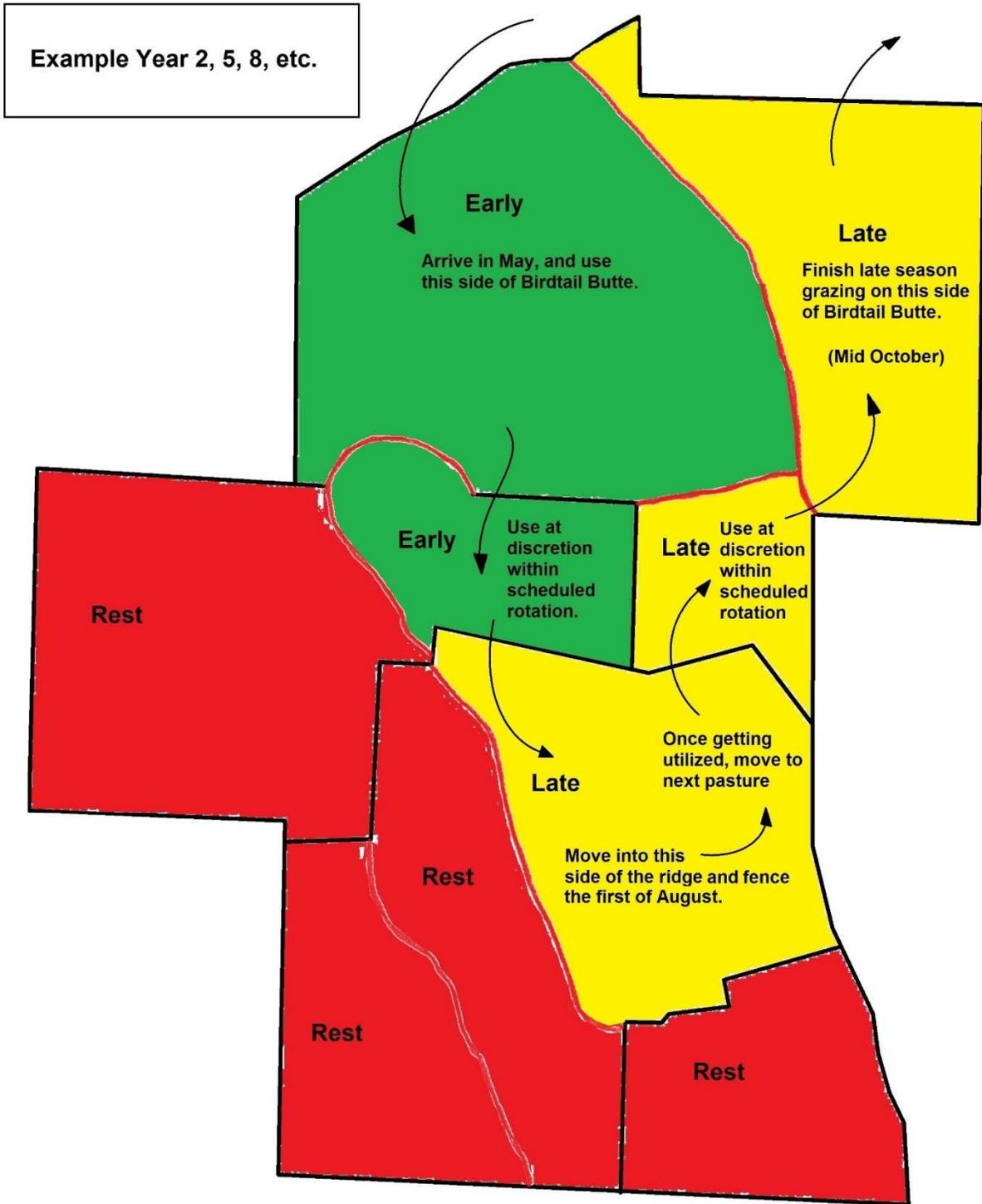
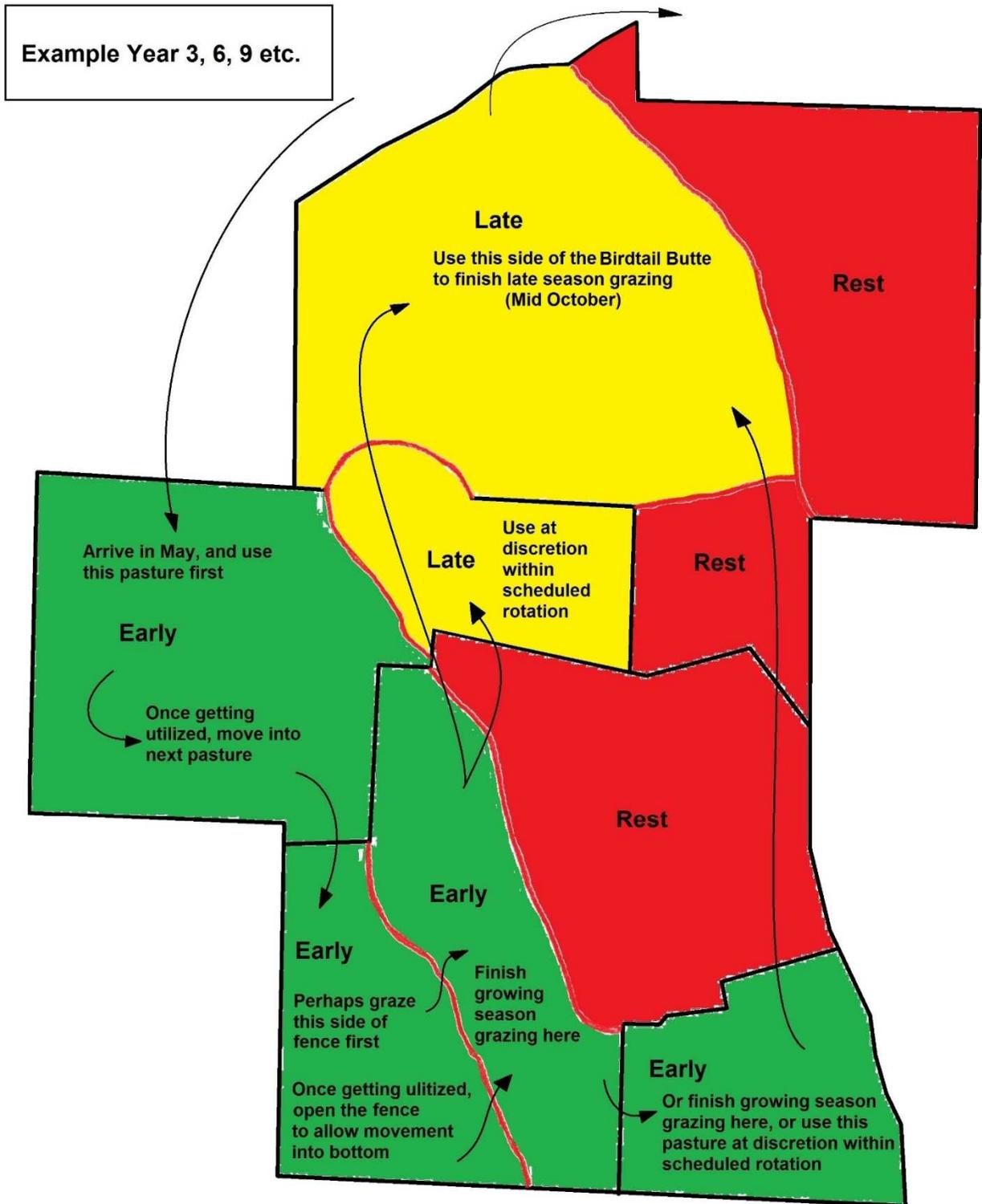


FIGURE 6.



**4) STOCKING RATE**

This grazing plan does not directly address stocking rate. Instead, maximum stocking rate will be based on compliance with the grazing system. The Landowner will determine stocking rate based upon ability to comply with grazing system pastures and timing sequence.

**5) SALT AND MINERAL MANAGEMENT**

When salt and mineral supplements are used, they will be located away from riparian and wetland zones in a manner that will minimize impacts to these areas.

**6) RANGE IMPROVEMENTS**

For the grazing system to operate, several physical improvements to the pasture layout are essential – see narrative descriptions below. Spring development, pipeline, and water tank installation, as well as installation of new permanent fences (perhaps some limited temporary electric fence) will be required for this system to work. Improvement needs are illustrated in Figures 8 & 9 and are summarized in Table 4. Construction of new permanent fence must adhere to FWP's Wildlife Friendly Fence Guidelines. Note: should the need to use a solar pump in more than one place arise, the pump could be moved between pastures depending on upcoming scheduled grazing treatments.

The Department and Landowner agree to equally share the costs of establishing wildlife friendly fencing and water development infrastructure necessary to implement the rest-rotation grazing system on the Property, the necessary infrastructure is further outlined in this management plan. The Department's total cash contribution shall not exceed \$41,500. All reimbursements will be based on actual receipts, using either of the following options:

1) Landowner installs improvements by providing labor, use of equipment, and materials. The Department will provide reimbursement for the cost of materials after installation work has been deemed satisfactory by Department staff.

OR

2) Landowner hires a contractor to supply materials and complete the improvements. The Department will provide 50 percent reimbursement for completed improvements after they have been deemed satisfactory by Department staff.

In either scenario, the Landowner shall have this work completed within three years from when the Conservation Easement is recorded. Both parties will maintain frequent contact during the installation and may mutually reassess the schedule and deadline for completion if unanticipated issues arise.

Additional future permanent fence maintenance and/or construction (not proposed here) will be at the landowner's expense, but may be cost shared by other agencies such as FWP and NRCS if available. Any additional new fence construction must comply with FWP's Wildlife-Friendly Fencing Guidelines. Future additional water developments, spring developments and/or well construction and associated pipelines, tanks, etc. (not

proposed here) will be at the landowner's expense, which may be cost shared with other agencies such as FWP and NRCS if available.

Understanding that the landowner has an agricultural operation to run, completion of the proposed range improvements will be given an approximate time frame of up to 3 years once formal purchase of the CE is completed. However, as/if certain improvements are not completed within the proposed time frame, further discussion between the landowner and FWP will take place to identify when such improvements will be completed.

The following narrative descriptions delineate estimated materials associated with the project (also see Figures 8 & 9 and Table 4):

- **East Birdtail Butte Pasture:** Approximately 1.2 miles of new fence (0.8 and 0.4 miles north and south of Birdtail Butte) would be required to create the west boundary of this pasture. Water developments would include a solar pump, approximately 0.5 miles of pipeline, and 1 water tank.
- **Center Pasture:** Approximately 0.6 miles of new fence would be required to create the north (0.4 miles) and northeast (0.2 miles) boundaries of this pasture. No water developments would be required.
- **West Birdtail Butte Pasture:** The east boundary would be shared with the west boundary of the East Birdtail Butte Pasture and north boundary of the Center Pasture. Therefore, the same new fence used for those pastures would be used here. Lionhead Butte provides a natural barrier and no fencing should be required there. The western portion of this pasture is dry. To help distribute livestock use, a gravity flow pipeline extending down about 0.4 miles from the existing developed spring could provide water to 1 water tank.
- **East Ridge Pasture:** Approximately 0.5 miles of new fence (0.3 and 0.2 miles north and south of the volcanic ridge) would be required to create the west boundary of this pasture. No water developments needed.
- **West Ridge Pasture:** The east boundary would require the same 0.5 miles of new fence required to create the East Ridge Pasture west boundary. In addition and potentially (pending cattle distribution), approximately 1.2 miles of electric fence would be required to create the west boundary. No water developments needed.
- **Pines Pasture:** The east boundary would require the same potential 1.2 miles of electric fence required to create the West Ridge Pasture west boundary. No other new fences would be required. To help distribute livestock use, one spring development, to include a gravity flow pipeline and new water tank, may be required in the northern portion of this sub-pasture.
- **Sullivan Pasture:** No fences required. Water developments would include 1 spring development with an associated water tank.
- **West Field Pasture:** No improvements needed.

**TABLE 4.** Estimated project materials, associated costs and associated cost share responsibilities. For additional information or reference related to these improvements, see Figures 8 & 9 and details on pages 22-23. Costs were calculated using 2017 NRCS cost estimates.

Project Component	Component Description	Location (Pasture)	Unit	Unit Cost	Total Amount	Estimated Cost Share		Installation Date
						FWP*	Cooperator*	
<sup>a</sup> Stock Tank	Pasture Set 1	East Birdtail Butte	3,000 gal	\$1.33/gal	\$4,000	\$4,000	Labor/Installation	
Solar System w/pump	Pasture Set 1	East Birdtail Butte	1 system	\$4,000	\$4,000	\$4,000	Labor/Installation	
<sup>b</sup> Pipeline	Pasture Set 1	East Birdtail Butte	3,000 ft.	\$0.60/ft.	\$1,800	\$1,800	Labor/Installation	
<sup>c</sup> Permanent Fence	Pasture Set 1	East Birdtail Butte / Center	8,500 ft.	\$1.26/ft.	\$10,700	\$5,350	Labor/Installation	
<sup>d</sup> Permanent Fence	Pasture Set 1	East Ridge	6,900 ft.	\$1.87/ft.	\$12,900	\$6,450	Labor/Installation	
<sup>a</sup> Stock Tank	Pasture Set 2	Sullivan	3,000 gal	\$1.33/gal	\$4,000	\$4,000	Labor/Installation	
<sup>c</sup> Electric Fence	Pasture Set 2	West Ridge/Pines	6,400 ft.	\$1.33/ft.	\$8,500	\$4,250	Labor/Installation	
<sup>a</sup> Stock Tank	Pasture Set 2	Pines	3,000 gal	\$1.33/ft.	\$4,000	\$4,000	Labor/Installation	
<sup>b</sup> Pipeline	Pasture Set 2	Pines	500 ft.	\$0.60/ft.	\$300	\$300	Labor/Installation	
<sup>a</sup> Stock Tank	Pasture Set 3	West Birdtail	3,000 gal	\$1.33/gal	\$4,000	\$4,000	Labor/Installation	
<sup>b</sup> Pipeline	Pasture Set 3	West Birdtail	2,300 ft.	\$0.60/ft.	\$1,380	\$1,380	Labor/Installation	
				5% Contingency	\$2,779	\$1,970		
				Total	\$58,359	\$41,500	All labor & installation costs	

\* See page 22, Range Improvements, for further information on cost share scenarios.

<sup>a</sup> Permanent drinking take (fiberglass) w/storage, 1,000-5,000 gallons.

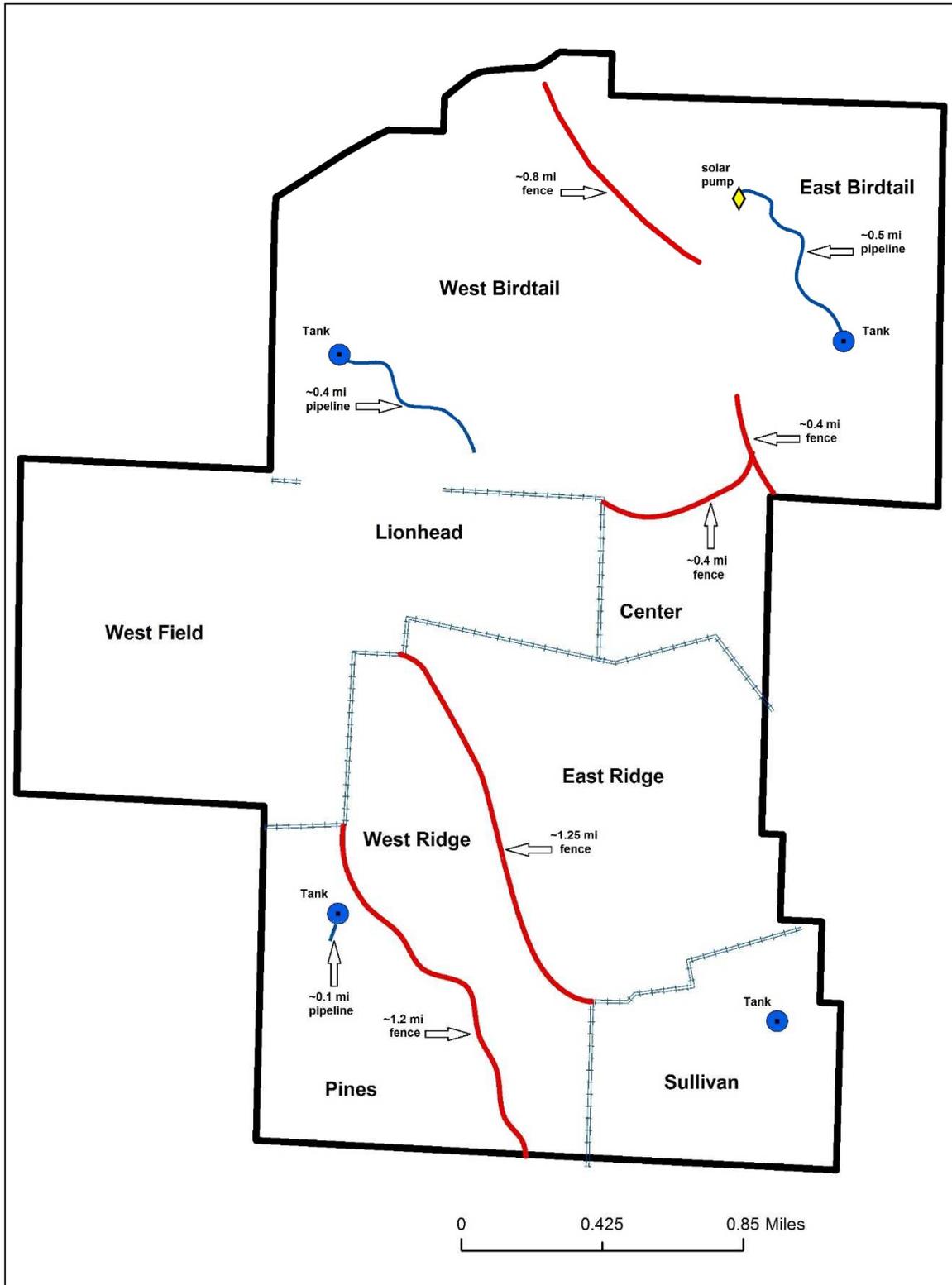
<sup>b</sup> Surface HDPE/PE, Iron Pipe Size and Tubing, on-ground installation, includes all appurtenances.

<sup>c</sup> Barbed or Smooth Wire, 3-5 wire. Fences will be installed with wildlife friendly considerations.

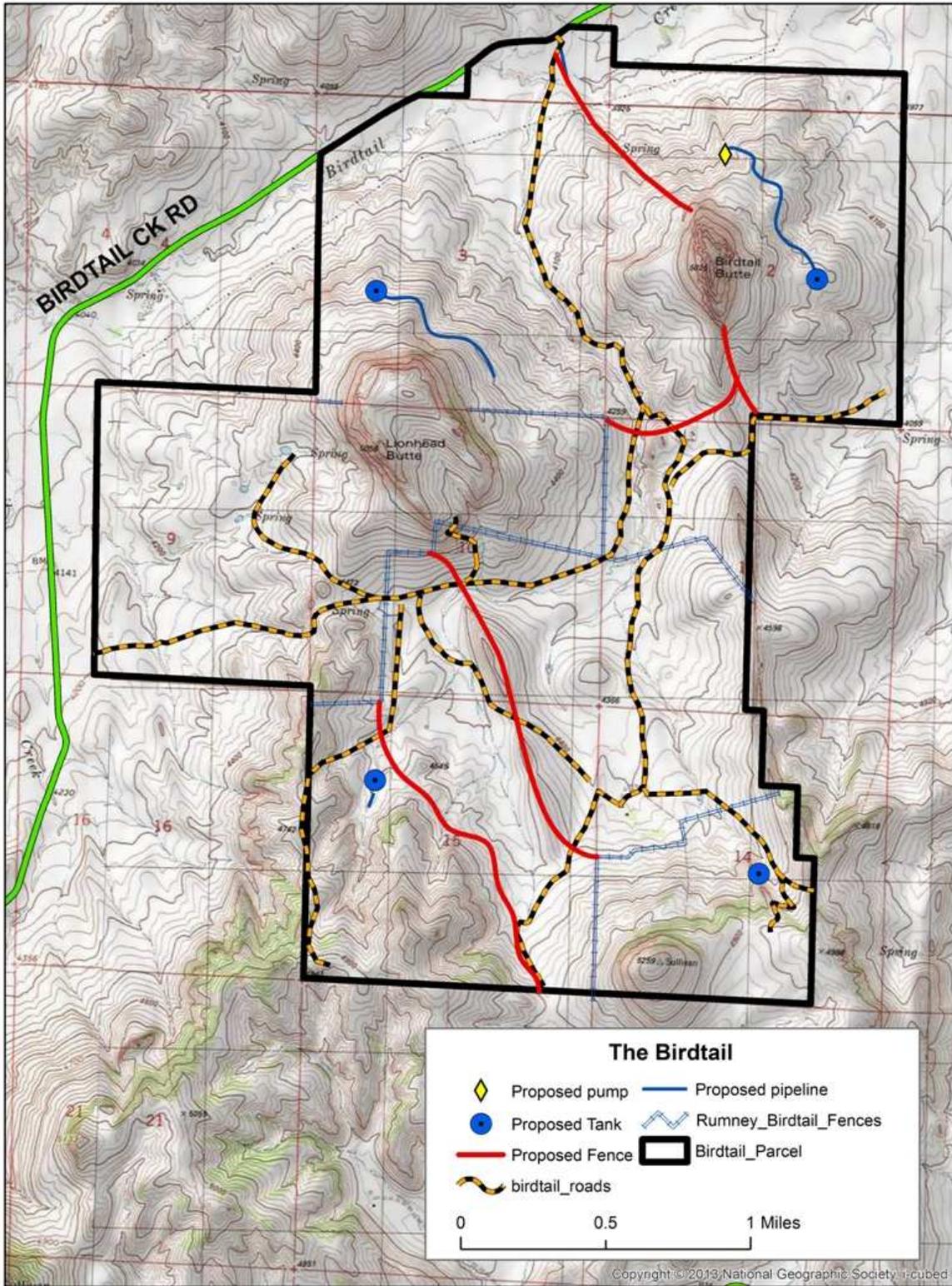
<sup>d</sup> Barbed or Smooth Wire, 3-5 wire. Installation in more difficult locations (i.e., rocky area). Fences will be installed with wildlife friendly considerations.

<sup>e</sup> Includes electric fence wire, posts, gates, solar charger, etc for 2-3 strand fence. This also assumes that electric fence materials may be moved and reused for other pastures within the grazing system as needed.

**FIGURE 8 (W/O TOPOGRAPHY).** New fence construction and water developments needed to implement rest rotation grazing system.



**FIGURE 9 (W/ TOPOGRAPHY).** New fence construction and water developments needed to implement rest rotation grazing system.



7) **HOW THE GRAZING PLAN ADDRESSES FISH AND WILDLIFE OBJECTIVES**

The overall objective of this grazing system is to maintain and/or enhance the vigor of native vegetation. This three-treatment rest-rotation system will maintain and/or improve forage quality and quantity for wildlife and cattle, and protect other important habitat components (e.g., cover) for numerous other wildlife species. The grazing system also ensures that the primary land use remains livestock grazing and relies on maintaining productive vegetation and soils. This grazing system will benefit a variety of wildlife species and maintain aesthetic and recreational values for the public (e.g., hunting).

Through a three-treatment rest-rotation system, season-long and year-long rest from grazing allows plants to replenish energy reserves and restore vigor lost through grazing during the growing season. When livestock are permitted into the “late” pasture following seed-ripe, hoof action tramples mature seeds into the soil, thereby facilitating seed planting. The following year’s “Rest” treatment allows seedlings to establish root systems and grow before growing-season livestock grazing commences again the following spring. This rest-rotation approach enables plants to maintain adequate vigor and thus recover more rapidly following grazing activity.

This grazing system helps establish adequate quantity and quality of forage and cover for a variety of wildlife species. For instance, high quality, early spring forage will be available for large game (deer, elk, antelope) the spring following the “Late” treatment, providing critical forage for these species as they come out of a negative energy balance from winter, leading into parturition period. Additionally, standing herbaceous cover in pastures subject to the “Late” and “Rest” treatments provide valuable cover for ground nesting and ground brooding birds, as well as cover for small mammals and other wildlife. Critical food items such as seeds and insects also tend to be more abundant in these rested pastures. Periodic rest in upland pastures also helps maintain shrub cover, important for browse as well as hiding and thermal cover for a variety of wildlife species. Increased residual vegetation across the area will improve soil fertility, quality, stability, and moisture content which, in turn, will improve overall vegetation and habitat quality.

When implemented, this grazing system maintains and/or improves healthy, productive rangeland for cattle while maintaining diverse habitat values for wildlife in the form of quality forage and cover.

# **APPENDIX D.**

## **BIRDTAIL CONSERVATION EASEMENT FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK**

### **INTRODUCTION**

The following grazing standards represent the minimum required by FWP of a landowner who reserves the right to pasture and graze livestock (private and public land). These standards apply to all FWP funded projects; at times it may be necessary to provide more rest from grazing than described as minimum to meet specific wildlife or fisheries habitat objectives. The minimum is most frequently applied (without additional adjustment for wildlife and fisheries needs) on projects like conservation easements and Upland Game Bird Habitat Enhancement Projects where the property remains in private ownership and agricultural use remains the primary objective. On FWP WMAs, wildlife production and habitat conservation are the primary objective and when livestock grazing occurs it is not unusual for the amount of rest from livestock grazing to exceed that required by the minimum standard. Also, on some areas where wildlife production is the primary objective, grazing intensity may be reduced to a level significantly lower than allowable by the minimum standard. These standards are designed to address management of both upland and riparian landforms.

### **WHY A MINIMUM STANDARD?**

Livestock grazing is the predominant land use in Montana. As the state's primary fish and wildlife management agency, FWP is actively involved with livestock grazing as it influences fish and wildlife habitats throughout Montana. About 2.4 million cattle are maintained in Montana. Livestock grazing occurs on about 69% of the state's land surface. Potential impacts to fish, wildlife and their habitats caused by grazing are well documented in the literature. Also well documented are potential benefits for conservation that can be derived for some wildlife species through carefully planned livestock grazing strategies. Conserving wildlife habitat while continuing livestock grazing typically requires management strategies that differ from those employed for the sole purpose of maintaining a sustainable livestock forage base that maximizes livestock production. One reason for the difference in management strategies is because vegetation is much more than a forage base for wildlife. Vegetation species composition, structure, and diversity are important aspects of cover essential to the survival and production of wildlife. Healthy riparian communities are critical not only for aquatic species but for proper channel and flood plain function. Seventy-five percent of all Montana wildlife species rely on riparian areas for all or a portion of their lives. This includes many species covered in the FWP's Comprehensive Fish and Wildlife Strategy. When livestock grazing occurs, it is not unusual for cover to be the population limiting factor for many species. Aldo Leopold referred to this concept of habitat quality as 'Quality of Landscape'. Addressing cover is especially important in implementation of FWP's Comprehensive Fish and Wildlife Strategy. It is therefore possible that a livestock operator may be employing a grazing strategy that maintains a sustainable forage base on most of the property, but may not be providing adequate forage, cover, or floral diversity for important fish and wildlife species.

Sustainable livestock production often employs grazing strategies emphasizing production and maintenance of grass species while placing less emphasis on the maintenance of forbs and woody plants. Many wildlife species require grazing strategies that emphasize healthy woody plants and availability of forbs and grass seed heads on at least portions of the landscape every year. The maintenance of robust woody vegetation and cover is also a very important component of healthy riparian systems. Healthy ecological systems are essential for a variety of aquatic and terrestrial riparian obligates.

The purpose of FWP's minimum grazing standards is to achieve a balance between maintaining sustainable agriculture and quality fish and wildlife habitat on working ranches yet provide flexibility to conserve and protect habitat needs where they are the primary objective and agriculture is secondary. FWP has applied the standard successfully over the past 30 years on a variety of projects ranging from working cattle ranches to FWP WMAs. There are examples in Montana and other states where a grazing standard similar to FWP's is being applied by livestock operators independent of FWP.

### **GRAZING PLAN**

Prior to grazing livestock the landowner and FWP must agree upon and implement a grazing plan. A grazing plan includes specific pasture delineations, a grazing formula specific to those pastures, the class of livestock, and other information pertinent to the management of livestock. Format for the grazing plan is included as part of the management plan template for conservation easements. The grazing plan will be included as part of the management plan for easement projects and will define the limits and extent to which grazing may occur. The Management Plan may be amended by mutual consent, as more particularly described within the details of the Conservation Easement. For other projects, the management plan will be included as an attachment to the grazing lease or contract. On conservation easements, the grazing plan will be enforceable only on lands covered by the easement.

### **UPLAND MINIMUM STANDARDS FOR SUMMER/FALL SYSTEMS**

This standard applies to upland pastures in native plant communities (i.e. generally on soils that have never been plowed) and for all riparian pastures. The grazing plan must meet or exceed minimum levels of periodic rest from livestock grazing to allow native plants adequate opportunity to reproduce and replenish root reserves. The minimum amount of rest required for any pasture grazed in one year during the plant growing season is defined as rest throughout the following year's growing season (i.e. grazing deferred until seed-ripe), followed by one year of yearlong rest, as shown in Table 1. Each pasture receives only one grazing treatment per year, and the treatments are rotated annually as shown in Table 1. The growing season is defined as beginning with the period of rapid plant growth (generally early to mid-May) until seed-ripe for the latest maturing native grasses, such as bluebunch wheatgrass or western wheatgrass (generally early August). Because the exact dates can vary as much as a few weeks depending on the location in Montana, specific dates for livestock movement are developed for each project. Occasionally it may be necessary for the grazing system to allow for some livestock to be in the pasture scheduled for the A treatment (Table 1) beyond the growing season.

A three-pasture grazing system is used as an example (Table 1) to show how the landowner might typically rotate livestock through pastures to meet the minimum levels and required sequence of rest from livestock grazing. In practice, the landowner is not limited to any

particular number of pastures; many projects include more than three pastures. In some instances, sub-pastures are employed to meet riparian or other objectives on the land. If livestock are grazed, they must be moved through the pastures in compliance with these standards and the grazing plan. Where grazing occurs during the growing season, the three-treatments outlined in Table 1 are essential and the total number of pastures and/or sub-pastures will vary between projects.

**TABLE 1.** Livestock grazing formula using a three-pasture approach as an example.

<b>Grazing Seasons</b>	<b>Pasture 1</b>	<b>Pasture 2</b>	<b>Pasture 3</b>
<b>Year One</b>	A	B	C
<b>Year Two</b>	B	C	A
<b>Year Three</b>	C	A	B

*When all treatments have been applied to all pastures, the grazing rotation begins again at Year One.*

*A = livestock grazing allowed during the growing season*

*B = livestock grazing begins after seed-ripe time*

*C = rest from livestock grazing yearlong*

### **WINTER AND/OR EARLY SPRING GRAZING**

In some situations, an early grazing treatment (prior to mid- May) may be considered. However, it must be kept in mind that grazing capacity and forage production in the year a pasture is grazed from winter to beyond mid-May, will be temporarily reduced. On projects where early spring grazing (prior to rapid plant growth) is combined with summer (active growing season) grazing the three grazing treatments described in Table 1 must be employed.

It is usually more efficient to manage winter grazing separately from spring-summer grazing. If livestock are to be grazed in a native range or riparian pasture in winter or early spring (generally December through early May), and a separate grazing formula is required, it must be coordinated with the summer-fall grazing system as follows: Minimum required rest in pastures where livestock are grazed and/or fed hay during winter is one winter of rest in every two (2) years. Hay, grain, salt, protein or other supplements will not be placed in riparian areas during winter or any other season. Minimum required rest in pastures where livestock are grazed in spring, prior to early May, is one spring of rest in every two years. Any pastures grazed later in spring than early-mid May require the greater amount of rest shown in the table 1. As a minimum, when grazing is limited to winter or the non-growing season period, a two-pasture alternate use approach is frequently used. The area designated for winter grazing is divided into two pastures and each year one pasture is grazed during winter months and the other rested and use is alternated from year to year.

During winter months cattle tend to concentrate in wooded areas (shrub or tree-dominated areas) for shelter. This must be kept in perspective when assessing the impacts to woody vegetation. It is often the case that with careful placement of hay, cattle impacts to woody vegetation can be kept to a small portion of the area. If this is not the case, it might be necessary to fence a portion of the woody vegetation to protect it from damage, but should only be done once efforts to control livestock distribution by other means have proven ineffective. An acceptable level of impact will vary depending on the objectives (i.e. a level of woody vegetation impact acceptable for a working cattle ranch may be much different than for a WMA).

### **SCOPE**

The goal is to include as much of the lands under easement as possible within the grazing system, but one must be realistic in recognizing the animal husbandry needs of a livestock operation. It may be necessary to set aside small areas as animal husbandry units to be used at the landowner's discretion. Such areas might include calving pastures, branding pastures, sorting pens, bull pastures, or holding corrals. As long as the majority of the lands involved are within a grazing system, meeting the minimum standards, this is acceptable.

### **NON-NATIVE PASTURE**

It is common for livestock operators to have pastures on their land that are non-native range. The landowner's goal is usually to keep these pastures productive as non-native pasture. The pastures typically are seeded with an exotic pasture grass or grass mix. On occasion forbs like dry-land alfalfa are included in the planting. The FWP minimum grazing standard does not apply to these pastures. In cases of non-native pasture a grazing strategy that is coordinated with the grazing system and meets the needs of the ranch should be worked out. In the case of crested wheatgrass pasture it may be necessary to allow grazing early (late-winter or early spring) each year to maintain palatability. In the case of other pasture grasses, such as smooth brome, a deferred approach works well; a pasture is grazed during the growing season in year one then deferred from grazing until near seed-ripe in year 2 (about the time such grasses would normally be harvested as hay). This will maintain the productivity of the non-native species until replanting is necessary and in some cases maintain them as attractive feeding sites for large wild ungulates. It is important to keep in mind that these areas, unlike native range, are essentially cropland and whether grazed or left idle will eventually need some sort of agricultural practice to maintain their productivity.

It is usually best to leave irrigated pasture management to the landowner's discretion. If important riparian is included in the field it might be necessary to fence the riparian zone from the irrigated pasture to protect it from livestock grazing. Usually grazing strategies employed on irrigated pasture are not consistent with proper management of key native riparian plants. In such situations it may be necessary to apply the guideline *Series entitled: The Need for Stream Vegetated Buffers Parts 1 through 3*, Montana Department of Environmental Quality 2008.

Livestock operators often place cows in hayfields during winter months. In such cases the field should be managed at the landowner's discretion and in some instances it might be necessary to fence out riparian from the hayfield to protect it from grazing.

### **STOCKING RATE**

Usually FWP does not require a maximum stocking rate as part of the grazing strategy on easements or Upland Game Bird Habitat Enhancement Projects. In such cases it is clearly stated in the grazing plan, that the maximum stocking rate will be ultimately determined by the operators ability to conform to the grazing system. In other words the livestock numbers may increase as long as the plan can be followed and livestock movement dates are not compromised. Such an approach is consistent with the reality that, for most easement projects, the primary use of the land is agricultural.

Occasionally a landowner has requested that an upper limit stocking rate be established as a stipulation in the easement. As long as the number of livestock is realistic this is not a problem.

On lands owned by FWP any grazing that occurs will be at stocking levels determined by the agency and approved by the FWP Commission.

#### **MINERAL AND OTHER SUPPLEMENTS**

On privately owned grazing lands the landowner is given more discretion on locations for placement of mineral block than on FWP lands. However, regardless of land ownership the placing of mineral block within riparian areas will be strongly discouraged. On FWP lands the placement of mineral block will be described as part of the grazing plan. Supplements will be placed away from riparian areas, ponds, and roads. Rocky (stable soil) areas on ridge tops or in the trees are preferred sites.

On FWP lands livestock within pasture grazing systems are not to be fed hay.

#### **FLEXIBILITY**

Rarely, a severe environmental influence (i.e. fire, drought, grasshoppers) may require a onetime deviation from the prescribed grazing plan. In such cases the landowner is to notify the local FWP representative of the problem. In a timely manner the local FWP representative, Habitat Section representative, and landowner will meet to discuss the issue and work out a solution. It is important to keep in mind that short term adjustments to the grazing plan must be the exception rather than the rule. Allowing grazing to occur in a pasture scheduled for rest is always a last resort. FWP has managed grazing systems across Montana through a variety of severe environmental events. This experience has shown that when a legitimate problem exists an alternative can usually be found that avoids grazing the pastures scheduled for rest.

Management Plan Approved By:

\_\_\_\_\_  
Robert G. Rumney, President  
Rumney Cattle Company, Inc., aka Rumney Cattle Co.

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Date

\_\_\_\_\_  
Graham Taylor, FWP Region 4 Wildlife Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gary Bertellotti, FWP Region 4 Supervisor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ken McDonald, FWP Wildlife Division Administrator

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Date

